

# IDAHO ADMINISTRATIVE BULLETIN

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# Preface

*The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rulemaking activities.*

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletin is cited by year and issue number. For example, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.*

## **RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE**

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been adopted and approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are not printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rulemaking**, printed in each Bulletin.*

## **TYPES OF RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

*The state of Idaho administrative rulemaking process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rulemaking. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.*

### **NEGOTIATED RULE**

*Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the*

rulemaking to the temporary and/or proposed rule stage.

### PROPOSED RULE

*A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:*

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

*As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.*

### TEMPORARY RULE

*Temporary rules may be adopted only when the governor finds that it is necessary for:*

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

*If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.*

*A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.*

*In cases where the text of the temporary rule is the same as that of the proposed rule, the rulemaking can be done concurrently as a temporary/proposed rule. State law requires that the text of a proposed or temporary rule be published in the Administrative Bulletin. Combining the rulemaking allows for a single publication of the text.*

*An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.*

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### **PENDING RULE**

*A pending rule is a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review before it becomes a final, enforceable rule.*

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:*

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

*Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.*

### **FINAL RULE**

*A final rule is a rule that has been adopted by an agency under the regular rulemaking process and is in effect.*

*No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.*

### **AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN**

*The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College Library.*

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## SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

*The Administrative Bulletin* is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

*The Administrative Code*, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

*Individual Rule Chapters* and *Individual Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

*Internet Access* - The Administrative Code and Administrative Bulletin, as well as individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

**EDITOR'S NOTE:** All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

### **IDAPA 38.05.01.060.02.c.ii.**

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

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## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

### **"DOCKET NO. 38-0501-0101"**

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).

"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

**"(BREAK IN CONTINUITY OF SECTIONS)"**

## INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

**"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."**

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

**"...in accordance with IDAPA 38.05.01.201."**

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

**"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"**

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2001

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
01-1	January, 2001	<b>*November 15, 2000</b>	January 3, 2001	January 24, 2001
01-2	February, 2001	December 20, 2000	February 7, 2001	February 28, 2001
01-3	March, 2001	January 24, 2001	March 7, 2001	March 28, 2001
01-4	April, 2001	February 21, 2001	April 4, 2001	April 25, 2001
01-5	May, 2001	March 21, 2001	May 2, 2001	May 23, 2001
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01-8	August, 2001	June 20, 2001	August 1, 2001	August 22, 2001
01-9	September, 2001	July 18, 2001	September 5, 2001	September 27, 2001
01-10	October, 2001	<b>**August 22, 2001</b>	October 3, 2001	October 24, 2001
01-11	November, 2001	September 19, 2001	November 7, 2001	November 28, 2001
01-12	December, 2001	October 24, 2001	December 5, 2001	December 26, 2001

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	<b>*November 14, 2001</b>	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
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02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	<b>**August 21, 2002</b>	October 2, 2002	October 23, 2002
02-11	November, 2002	September 18, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

*\*Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.*

*\*\*Last day to submit proposed rules in order to complete rulemaking for review by legislature.*

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<b>IDAPA 49</b>	<b>SHORTHAND REPORTERS, Board of Certified</b>	<b>VOLUME 8</b>
<b>IDAPA 36</b>	<b>TAX APPEALS, Idaho Board of</b>	<b>VOLUME 7</b>
<b>IDAPA 35</b>	<b>TAX COMMISSION, State</b>	<b>VOLUME 7</b>
<b>IDAPA 39</b>	<b>TRANSPORTATION, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 54</b>	<b>TREASURER, Office of the State</b>	<b>VOLUME 9</b>
<b>IDAPA 21</b>	<b>VETERANS SERVICES, Division of</b>	
<b>IDAPA 46</b>	<b>VETERINARY MEDICAL EXAMINERS, Board of</b>	<b>VOLUME 8</b>
<b>IDAPA 55</b>	<b>VOCATIONAL AND TECHNICAL EDUCATION, Division of</b>	<b>VOLUME 9</b>
<b>IDAPA 47</b>	<b>VOCATIONAL REHABILITATION, Division of</b>	<b>VOLUME 8</b>
<b>IDAPA 37</b>	<b>WATER RESOURCES, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 42</b>	<b>WHEAT COMMISSION, Idaho</b>	<b>VOLUME 8</b>

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE**

**02.02.14 - RULES FOR WEIGHTS AND MEASURES**

**DOCKET NO. 02-0214-0101**

**NOTICE OF TEMPORARY AND PROPOSED RULEMAKING**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2001.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 71-111, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

The proposed changes to these rules are to eliminate the retroactive requirement for ticket printers for vehicle mounted metering systems, to delete obsolete language referencing National Bureau of Standards (NBS), to add date specific editions of National Institute of Standards and Technology (NIST) Handbooks (HB) 44 and HB 133 as adopted by reference, to delete references to documents no longer in print and add a website address for reference documents.

**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:

To be in compliance with deadlines and amendments to governing law and rules and be consistent with rules of Northwest states.

**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 rulemaking was not conducted because this change is being made to mirror laws and rules of surrounding states relative to requirements for ticket printers on vehicle mounted metering systems.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Tom Schafer at 332-8690.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2001.

DATED this 18th day of July, 2001.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
Boise, ID 83712  
phone 332-8500, fax 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0214-0101

050. CHECKING, TESTING AND EXAMINING OF DEVICES, PACKAGES AND LABELS.

**01. Required Reference Materials.** The *latest 2002* edition of Handbook No. 44 of ~~the National Bureau of Standards, or its successor organization,~~ the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices," ~~together with current supplements and amendments thereto~~ hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in the Department of Agriculture Rules for Weights and Measures.

~~(3-19-99)(10-1-01)T~~

**02. Ticket Printer - Customer Ticket.** Vehicle-mounted metering systems shall be equipped with a ticket printer which shall be used for all sales where product is delivered through the meter. A copy of the ticket issued by the device shall be left with the customer at the time of delivery or as otherwise specified by the customer. This Section shall apply to vehicles put into service on or after January 1, 1995, ~~and shall be retroactively applied to all vehicles on January 1, 2002.~~

~~(3-19-99)(10-1-01)T~~

**03. Required Reference Materials For Checking Prepackaged Commodities.** The *latest 4th* Edition of ~~Handbook No. 67 and~~ Handbook No. 133 of ~~the National Bureau of Standards, or its successor organization,~~ the National Institute of Standards and Technology, United States Department of Commerce, "~~Checking Prepackaged Commodities,~~" ~~together with current supplements and amendments thereto~~ "Checking the Net Contents of Packaged Goods," hereby incorporated by reference, shall be the authority in checking ~~prepackaged~~ prepackaged commodities, unless otherwise stated in the Department of Agriculture Rules for Weights and Measures.

~~(3-19-99)(10-1-01)T~~

~~**04. Required Reference Materials For Examinations Of Farm Milk Tanks.** The latest edition of Handbook No. 98 of the National Bureau of Standards, or its successor organization, the National Institute of Standards and Technology, United States Department of Commerce, "Examination of Farm Milk Tanks," together with current supplements and amendments thereto, shall be the authority in examining farm milk tanks, provided, however, that milk tanks may be calibrated and charts therefore may be formulated on a weight basis, unless otherwise stated in the Department of Agriculture Rules for Weights and Measures.~~

~~(3-19-99)~~

~~**05. Required Reference Materials For Examination Of Liquefied Petroleum Gas Liquid Measuring Devices.** The latest edition of Handbook No. 99 of the National Bureau of Standards, or its successor organization, the National Institute of Standards and Technology, United States Department of Commerce, "Examination of Liquefied Petroleum Gas Liquid Measuring Devices," together with current supplements and amendments thereto, shall be the authority in examining liquefied petroleum gas measuring devices, unless otherwise stated in the Department of Agriculture Rules for Weights and Measures.~~

~~(3-19-99)~~

~~**06. Other Required Reference Materials.** The above National Bureau of Standards, or its successor organization, the National Institute of Standards and Technology, handbooks will be used by the Idaho Department of Agriculture to determine specifications, tolerances, procedures, methods for testing, sealing, checking and examining devices, equipment and packages within the capacity and limits of personnel and equipment available to the Idaho Department of Agriculture.~~

~~(7-1-93)~~

**074. Local Availability.** Copies of ~~such #~~Handbooks No. 44 (2002 Edition) and Handbook No. 133 (4th Edition) are on file with the State Law Library and the Idaho Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho, 83712, or may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402. Copies are available for downloading on the internet by going to <http://nist.gov>. Go to "NIST Products and Services" then "Weights and Measures," scroll down to "General Information" and click on "Publications including Uniform Laws and Regulations". Documents are available in PDF or WP formats.

~~(7-1-93)(10-1-01)T~~

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING**  
**DOCKET NO. 07-0104-0101**  
**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1006, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes 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 is being adopted as proposed. The original text of the proposed rule was published in the 2001 Idaho Administrative Bulletin, Volume No. 01-6, pages 29 through 31.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Gary Malmen, Bureau Chief, at (208) 334-2183.

DATED this 16th day of July 2001.

Gary Malmen  
Bureau Chief  
Electrical Bureau  
Division of Building Safety  
277 N. 6<sup>th</sup>  
P. O. Box 83720  
Boise, ID 83720  
Telephone: (208) 334-2183  
Facsimile: (208) 334-4891

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**IDAPA 07, TITLE 01, Chapter 04**

**RULES GOVERNING ELECTRICAL SPECIALTY LICENSING**

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

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-6, June 6, 2001, pages 29 through 31.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.**

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.30 - RULES OF THE BENEFITS BUREAU**  
**DOCKET NO. 09-0130-0101**

**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

IDAPA 09.01.30, Section 275 is being amended to clarify situations in which a claimant has been suspended for an "indefinite period of time" to define, for benefit eligibility purposes, the suspension as a discharge.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being amended to clarify an existing rule which has caused confusion.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Roger Holmes, 208/334-6317.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull  
U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
208/334-6271  
Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-0101**

**275. DISCHARGE.**

A claimant who has been discharged for misconduct in connection with his employment is ineligible. Ref. Sec. 72-1366(5), Idaho Code. (3-19-99)

**01. Burden Of Proof.** The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer. (3-19-99)

**02. Disqualifying Misconduct.** Misconduct that disqualifies a claimant for benefits must be connected with the claimant's employment and involve one of the following: (3-19-99)

- a. Disregard of Employer's Interest. A willful, intentional disregard of the employer's interest. (3-19-99)
- b. Violation of Reasonable Rules. A deliberate violation of the employer's reasonable rules. (3-19-99)
- c. Disregard of Standards of Behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional, or deliberate. The claimant's subjective state of mind is irrelevant. The test for misconduct in "standard of behavior cases" is as follows: (3-19-99)
  - i. Whether the claimant's conduct fell below the standard of behavior expected by the employer; and (3-19-99)
  - ii. Whether the employer's expectation was objectively reasonable in the particular case. (3-19-99)

**03. Inability To Perform Or Ordinary Negligence.** Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment. (3-19-99)

**04. Non-Job Related Conduct.** If the claimant has been discharged for conduct involving personal, non-job related behavior, the discharge is not for misconduct connected with employment. (3-19-99)

**05. When Notice Of Discharge Prompts A Resignation.** If a claimant has resigned after receiving a notice of discharge (or lay off due to a lack of work), but before the effective date of the discharge, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility: (3-19-99)

- a. The employee was given notice by the employer of a specific separation date; (3-19-99)
- b. The employee's decision to quit before the effective date of the termination was a consequence of the pending separation; and (3-19-99)
- c. The voluntary quit occurred a short time prior to the effective date of the termination. (3-19-99)

**06. Indefinite Suspension.** A claimant who has been suspended without pay for an indefinite period of time, who has not been given a date to return to work, is considered discharged. A determination will be made as to whether the discharge was for misconduct connected with employment. ( )

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.30 - RULES OF THE BENEFITS BUREAU**  
**DOCKET NO. 09-0130-0102**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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: IDAPA 09.01.30, Section 375 is being amended to clarify that a claimant who has been suspended with or without pay for a specific number of days, who has been given a date to return to work, is not considered unemployed. The remainder of the rule, regarding claimants who receive an indefinite suspension, will be moved to the section of the benefits rules regarding discharge.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being amended to clarify an existing rule which has caused confusion.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Roger Holmes, 208/334-6317.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull, U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street, Boise, ID 83735  
208/334-6271 / Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-0102**

**375. FULLY EMPLOYED/NOT UNEMPLOYED.**

Ref. Sec. 72-1312(1), Idaho Code.

(3-19-99)

**01. Excessive Earnings Week.** An excessive earnings week is a week in which the claimant's wages allocable to that week are more than one and one-half (1-1/2) times the claimant's weekly benefit amount. (3-19-99)

**02. Leave Of Absence.** A claimant who is on a mutually agreed upon leave of absence is employed and not eligible for benefits. In order to meet the definition of "leave of absence", the employer must have committed to the claimant's return to work at the end of the leave. (3-19-99)

**03. Suspension.** ~~If a~~ A claimant is who has been suspended with or without pay for a specific number of days, ~~he~~ who has been given a date to resume employment after the suspension, is not considered unemployed ~~nor~~ and is not eligible for benefits. ~~However, a person suspended without pay for an indefinite period of time is considered discharged and a determination will be made as to whether the discharge was for misconduct.~~ (3-19-99)()

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.30 - RULES OF THE BENEFITS BUREAU**  
**DOCKET NO. 09-0130-0103**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

IDAPA 09.01.30, Subsection 425.07 is being amended to add categories of information that a claimant must provide to the Department as a condition of eligibility for benefits, including a record of a claimant's work search, if requested, once a claim has been established.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made to ensure compliance with statutory eligibility requirements and with federal guidelines for benefit timeliness and quality.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Roger Holmes, 208/334-6317.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull  
U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
208/334-6271  
Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-0103**

**425. NEW CLAIMS/ADDITIONAL CLAIMS.**  
Ref. Sec. 72-1308, Idaho Code.

(3-19-99)

**01. Claims For Benefits, Delayed Filing.** When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims

load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

**02. Effective Date Of Backdated Claims.** When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

**03. Filing Of New Claims.** New intrastate and interstate claims may be filed electronically, in person at a local office or at an itinerant location, or by mail if permitted by a claims examiner. New interstate claims may also be filed by telephone. (3-30-01)

a. **Electronically Filed Claims.** Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

b. **In-person Filing.** A claimant may file a claim in person at the local Job Service office serving the claimant's area of residence. Job Service offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

c. **Interstate Claims.** Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

d. **Itinerant Locations.** Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

e. **Mailed Claims.** A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

**04. Itinerant Claims.** Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

**05. Registration For Work.** All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

**06. Registration/Reporting Requirements – Interstate Claimants.** Interstate claimants shall be required to register for work in the same manner and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (3-30-01)

**07. Requirement To Provide Information.** If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual ~~filing~~ making a claim for benefits shall provide the Department with: (3-30-01)(\_\_\_\_)

- a. ~~His~~ The claimant's legal name; (3-30-01)(\_\_\_\_)
- b. ~~His address where mail is delivered to him~~ The claimant's Social Security Number; (3-30-01)(\_\_\_\_)
- c. ~~His place of last employment~~ The address where the claimant's mail is delivered; (3-30-01)(\_\_\_\_)
- d. ~~The employer's name and correct mailing address~~ claimant's place of last employment; (3-30-01)(\_\_\_\_)
- e. ~~His Social Security Number~~ The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-30-01)(\_\_\_\_)
- f. ~~The reason for separation from all applicable employers~~ If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-30-01)(\_\_\_\_)
- g. ~~His~~ The claimant's plans for finding other employment at the earliest possible time; and (3-30-01)(\_\_\_\_)
- h. ~~If requested by the Department, a list of all other employment in the past eighteen (18) months~~ Other information necessary for the proper processing of the claim. (3-30-01)(\_\_\_\_)
- i. ~~Failure to provide this information may result in ineligibility for benefits until the information is provided. Ref. Sec. 72-1366(1), Idaho Code.~~ Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-30-01)(\_\_\_\_)

**08. Right To Claim Benefits.** In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

**09. Separation Information.** Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed twelve (12) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (3-19-99)

**10. Separation Notice.** (3-19-99)

- a. Request for Separation Information. Every employer (including employers not subject to Title 72,

Chapter 13, Idaho Code), after receiving a request for separation information from the Department because an individual has filed a claim for benefits, shall submit to the Department a report of the reasons for the separation whenever such claimant: (4-5-00)

- i. Left his employment voluntarily; (3-19-99)
- ii. Was discharged from his employment due to misconduct; (3-19-99)
- iii. Is unemployed due to a strike, lockout, or other labor dispute; or (3-19-99)
- iv. Was separated for any other reason except lack of available work. (3-19-99)

b. **Employer Response.** The employer's response shall be completed in accordance with instructions printed on the Department's request for separation information and shall be completed by the employer or on the employer's behalf by someone having personal knowledge of the facts therein stated. The completed statement must be filed with the Department within ten (10) days from the date the request for separation information was mailed to the employer or by the extended due date, if any, granted by the Department. If the due date is a Saturday, Sunday, or holiday, the time for filing the employer's statement shall be extended to include the following working day. The employer's statement may be filed by one (1) of the following methods with the office listed on the request for separation information: (4-5-00)

i. **Personal delivery.** The employer's statement may be personally delivered to the office by handing it to a Department employee at the office. The date of personal delivery shall be noted on the statement by the Department employee and shall be deemed the date of filing. The statement must be delivered to a Department employee by 5 p.m. on a business day to be deemed filed on that date. (3-19-99)

ii. **Faxing or e-mailing.** The employer's statement may be faxed or e-mailed to the office if sent to the fax number or e-mail address listed on the request for separation information. A faxed or e-mailed statement that is received by 5 p.m. (as of the time zone of the office receiving the fax or e-mail) on a business day shall be deemed filed on that date. A faxed or e-mailed statement that is received on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. (4-5-00)

iii. **Mailing.** The employer's statement may be mailed to the office. A mailed statement shall be deemed filed on the date of mailing as determined by the postmark on the envelope containing the statement. Ref. Sec. 72-1337 and 72-1368, Idaho Code. (3-19-99)

iv. **Telephone.** The employer's statement may be provided to the office by telephone if: (4-5-00)

(1) The employer calls the office telephone number listed on the request for separation information between 8 a.m. and 5 p.m. (as of the time zone of the office receiving the call) on a business day and asks to provide the separation statement to a Department representative; or (4-5-00)

(2) A Department representative calls the employer to obtain the separation information. (4-5-00)

v. The employer must provide the separation information to a Department representative on or before the employer's due date for providing the information, in order for the statement to be deemed timely filed. (4-5-00)

c. **Date of Mailing of Request by the Department.** The date indicated by the Department on the request for separation information as "Date of Mailing" shall be presumed to be the date the request was deposited in the United States mail, unless shown otherwise by a preponderance of competent evidence. (3-19-99)

d. **Extending Due Date.** To obtain an extension of the due date for the separation statement, an employer must contact the local office and request the extension by the date the separation statement is otherwise due. (3-19-99)

e. **Appealing Ruling of Untimeliness.** If, in the initial determination on the claim, it is determined that

an employer has failed to file the completed separation statement within the time provided in this rule, the employer may assert that there was good cause for such failure or that the requested information was provided by the due date by filing an appeal of that determination in accordance with IDAPA 09.01.06, "Rules of the Appeals Bureau," Section 012, within fourteen (14) days of the date the determination was mailed. (3-19-99)

**11. Filing Of An Additional Claim Or Reopening A Claim.** A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

a. **In-person Filing.** When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

b. **Mailing.** A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

c. **Electronic Filing.** A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

d. **Telephone Filing.** A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

e. **Reestablished Claim.** A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

**12. Use Of Wage Credits.** All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

**13. Valid Claim.** To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR  
09.01.30 - RULES OF THE BENEFITS BUREAU**

**DOCKET NO. 09-0130-0104**

**NOTICE OF TEMPORARY AND PROPOSED RULEMAKING**

**EFFECTIVE DATE:** The effective date of the temporary rule is March 8, 2001.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

IDAPA 09.01.30, Subsection 425.10 is being changed to delete the penalty for employers who fail to provide separation information within 10 days of the Department's request. The penalty language is being deleted in response to changes made to Section 72-1368, Idaho Code, which was passed during the 2001 Legislative session and became effective March 8, 2001.

**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: The rule is being amended to reflect changes made by the 2001 Legislature and effective on March 8, 2001.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is in response to legislative action during the 2001 session.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes, 208/334-6317.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull  
U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
208/334-6271  
Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-0104**

**425. NEW CLAIMS/ADDITIONAL CLAIMS.**

Ref. Sec. 72-1308, Idaho Code.

(3-19-99)

**01. Claims For Benefits, Delayed Filing.** When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

**02. Effective Date Of Backdated Claims.** When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

**03. Filing Of New Claims.** New intrastate and interstate claims may be filed electronically, in person at a local office or at an itinerant location, or by mail if permitted by a claims examiner. New interstate claims may also be filed by telephone. (3-30-01)

a. **Electronically Filed Claims.** Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

b. **In-person Filing.** A claimant may file a claim in person at the local Job Service office serving the claimant's area of residence. Job Service offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

c. **Interstate Claims.** Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

d. **Itinerant Locations.** Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

e. **Mailed Claims.** A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

**04. Itinerant Claims.** Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated,

changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

**05. Registration For Work.** All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

**06. Registration/Reporting Requirements – Interstate Claimants.** Interstate claimants shall be required to register for work in the same manner and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (3-30-01)

**07. Requirement To Provide Information.** Any individual filing a claim for benefits shall provide the Department with: (3-30-01)

- a. His legal name; (3-30-01)
- b. His address where mail is delivered to him; (3-30-01)
- c. His place of last employment; (3-30-01)
- d. The employer's name and correct mailing address; (3-30-01)
- e. His Social Security number; (3-30-01)
- f. The reason for separation from all applicable employers; (3-30-01)
- g. His plans for finding other employment at the earliest possible time; and (3-30-01)
- h. If requested by the Department, a list of all other employment in the past eighteen (18) months. (3-30-01)
- i. Failure to provide this information may result in ineligibility for benefits until the information is provided. Ref. Sec. 72-1366(1), Idaho Code. (3-30-01)

**08. Right To Claim Benefits.** In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

**09. Separation Information.** Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed twelve (12) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (3-19-99)

**10. Separation Notice.** (3-19-99)

a. Request for Separation Information. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), after receiving a request for separation information from the Department because an individual has filed a claim for benefits, shall submit to the Department a report of the reasons for the separation whenever such claimant: (4-5-00)

- i. Left his employment voluntarily; (3-19-99)
  - ii. Was discharged from his employment due to misconduct; (3-19-99)
  - iii. Is unemployed due to a strike, lockout, or other labor dispute; or (3-19-99)
  - iv. Was separated for any other reason except lack of available work. (3-19-99)
- b. Employer Response. The employer's response shall be completed in accordance with instructions printed on the Department's request for separation information and shall be completed by the employer or on the employer's behalf by someone having personal knowledge of the facts therein stated. ~~The completed statement must be filed with the Department within ten (10) days from the date the request for separation information was mailed to the employer or by the extended due date, if any, granted by the Department. If the due date is a Saturday, Sunday, or holiday, the time for filing the employer's statement shall be extended to include the following working day. The employer's statement may be filed by one (1) of the following methods with the office listed on the request for separation information:~~ (4-5-00)(3-8-01)T
- i. ~~Personal delivery. The employer's statement may be personally delivered to the office by handing it to a Department employee at the office. The date of personal delivery shall be noted on the statement by the Department employee and shall be deemed the date of filing. The statement must be delivered to a Department employee by 5 p.m. on a business day to be deemed filed on that date.~~ (3-19-99)
  - ii. ~~Faxing or e-mailing. The employer's statement may be faxed or e-mailed to the office if sent to the fax number or e-mail address listed on the request for separation information. A faxed or e-mailed statement that is received by 5 p.m. (as of the time zone of the office receiving the fax or e-mail) on a business day shall be deemed filed on that date. A faxed or e-mailed statement that is received on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day.~~ (4-5-00)
  - iii. ~~Mailing. The employer's statement may be mailed to the office. A mailed statement shall be deemed filed on the date of mailing as determined by the postmark on the envelope containing the statement. Ref. Sec. 72-1337 and 72-1368, Idaho Code.~~ (3-19-99)
  - iv. ~~Telephone. The employer's statement may be provided to the office by telephone if:~~ (4-5-00)
    - (1) ~~The employer calls the office telephone number listed on the request for separation information between 8 a.m. and 5 p.m. (as of the time zone of the office receiving the call) on a business day and asks to provide the separation statement to a Department representative; or~~ (4-5-00)
    - (2) ~~A Department representative calls the employer to obtain the separation information.~~ (4-5-00)
  - v. ~~The employer must provide the separation information to a Department representative on or before the employer's due date for providing the information, in order for the statement to be deemed timely filed.~~ (4-5-00)
- e. ~~Date of Mailing of Request by the Department. The date indicated by the Department on the request for separation information as "Date of Mailing" shall be presumed to be the date the request was deposited in the United States mail, unless shown otherwise by a preponderance of competent evidence.~~ (3-19-99)
- d. ~~Extending Due Date. To obtain an extension of the due date for the separation statement, an employer must contact the local office and request the extension by the date the separation statement is otherwise due.~~ (3-19-99)
- e. ~~Appealing Ruling of Untimeliness. If, in the initial determination on the claim, it is determined that an employer has failed to file the completed separation statement within the time provided in this rule, the employer may assert that there was good cause for such failure or that the requested information was provided by the due date by filing an appeal of that determination in accordance with IDAPA 09.01.06, "Rules of the Appeals Bureau," Section 012, within fourteen (14) days of the date the determination was mailed.~~ (3-19-99)

**11. Filing Of An Additional Claim Or Reopening A Claim.** A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

a. **In-person Filing.** When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

b. **Mailing.** A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

c. **Electronic Filing.** A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

d. **Telephone Filing.** A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

e. **Reestablished Claim.** A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

**12. Use Of Wage Credits.** All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

**13. Valid Claim.** To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.30 - RULES OF THE BENEFITS BUREAU**  
**DOCKET NO. 09-0130-0105**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

IDAPA 09.01.30, Subsection 575.09 would be amended to add additional types of work-seeking activities, such as resume preparation or labor market research, that a claimant may be expected to perform to comply with the work-seeking requirement for eligibility for benefits.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the agency determined it was not feasible due to the simple nature of the proposed rule amendment.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Roger Holmes, 208/334-6317.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull, U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street, Boise, ID 83735  
208/334-6271 / Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-0105**

**575. SEEKING WORK.**  
Ref. Sec. 72-1366(4), (6), Idaho Code. (3-19-99)

**01. Attitude And Behavior.** A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-19-99)

**02. Effort To Secure Employment.** A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-19-99)

**03. Employer's Hiring Practices.** An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-19-99)

**04. Job Attachment Classifications.** For the purpose of administering the work search requirements

of Section 72-1366(4) and (6), Idaho Code, claimants will be classified according to their attachment to an employer or industry, as follows: (3-19-99)

a. Code R-Recall, U-Union or X-Both. Claimants who have a firm attachment to an employer, industry or union, or who are temporarily or seasonally unemployed, and expect to return to their former jobs or employers in a reasonable length of time. (3-19-99)

b. Code B. Claimants who possess marketable skills in an occupation, but have no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in their areas of availability. (3-19-99)

c. Code C. Claimants who have no marketable skills or whose skills have become obsolete and who are unable to return to their former occupations, or who have a special need for employment-related services. (3-19-99)

d. Code D. Claimants who are assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-19-99)

**05. Jobs Availability.** A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-19-99)

**06. No Employment Prospects.** A claimant shall apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-19-99)

**07. Register For Work.** A claimant must register for work and report as required to be eligible for benefits. Ref. Sec. 72-1366(1), (2), Idaho Code. (3-19-99)

**08. Seasonal Availability.** A claimant who is regularly employed on a seasonal basis shall be available for other types of work in the off-season to be eligible for benefits. (3-19-99)

**09. Work-Seeking Requirement Categories.** Claimants shall seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's length of unemployment, the prevailing local labor market conditions, and/or the average county unemployment rates. Claimants that are required to secure employment must register with Job Service within two (2) weeks of filing an initial claim for benefits. Failure to comply with work-seeking requirements may result in a denial of benefits. (3-19-99)( )

a. Code O: ~~Claimants who are required to do at least one (1) of the following must:~~ (3-19-99)( )

i. Maintain regular contact with their employer(s) or union. Code O claimants may also be required to engage in one (1) or more of the following activities to increase their prospects of returning to work or securing employment: (3-19-99)( )

ii. Make local inquiries; (3-19-99)

iii. Maintain contact with the local Job Service office; ~~or~~ (3-19-99)( )

iv. Check "help-wanted" ads in newspapers or trade publications; (3-19-99)( )

v. Attend a Job Search Workshop; or ( )

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. ( )

b. Code I: ~~Claimants who are~~ will be required to do at least engage in one (1) or more of the

following activities to increase their prospects of securing employment: (3-19-99)( )

i. ~~Send resumes to firms/businesses that hire people with their skills~~ Make at least one (1) employer contact each week in the manner prescribed by the local Job Service office; (3-19-99)( )

ii. ~~Make at least one (1) employer contact each week either in person or by phone; or Attend a Job Search Workshop;~~ (3-19-99)( )

iii. ~~Attend a Job Search Workshop;~~ Expand work search efforts to surrounding areas or states; (3-19-99)( )

iv. Send resumes to firms/businesses that hire people with their skills; ( )

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or ( )

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. ( )

c. Code 2: ~~Claimants who are~~ will be required to do at least engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-19-99)( )

i. Make at least two (2) employer contacts per week in the manner prescribed by the local Job Service office; (3-19-99)( )

ii. ~~Expand work search efforts to surrounding areas or states; or Attend a Job Search Workshop;~~ (3-19-99)( )

iii. ~~Attend a Job Search Workshop;~~ Expand work search efforts to surrounding areas or states; (3-19-99)( )

iv. Send resumes to firms/businesses that hire people with their skills; ( )

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or ( )

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. ( )

d. Code 3: ~~Claimants who are~~ will be required to do at least engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-19-99)( )

i. Make at least three (3) employer contacts per week in the manner prescribed by the local Job Service office; or (3-19-99)( )

ii. ~~Enroll and attend a specific training program to meet the requirements of the employment plan.~~ Attend a Job Search Workshop; (3-19-99)( )

iii. Expand work search efforts to surrounding areas or states; ( )

iv. Send resumes to firms/businesses that hire people with their skills; ( )

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or ( )

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. ( )

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU**  
**DOCKET NO. 09-0135-0101**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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: There are currently no clear definitions of what services constitute domestic labor, and what remuneration constitutes non-cash payments for farm work. The rule change will add new subsections to provide a definition of domestic labor consistent with that used by the Internal Revenue Service and to define what remuneration constitutes non-cash payments for farm work.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being amended to clarify an existing rule that has caused confusion.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Whitworth, 208/334-6385.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull, U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street, Boise, ID 83735  
208/334-6271 / Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0135-0101**

**061. DEFINITIONS.**

The definitions listed in IDAPA 09.01.35, "Rules of the Employer Accounts Bureau," Section 011, and the following are applicable to this Bureau. (3-19-99)

**01. Tolerance Amount.** A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

**02. Wages.** The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-19-99)

- a. Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments

- made by corporations or other similar entities if paid in exchange for services; (4-5-00)
- b. Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-19-99)
  - c. Commissions for past services in covered employment; (3-19-99)
  - d. Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (4-5-00)
  - e. Salary advances against commissions; (3-19-99)
  - f. All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-19-99)
  - g. Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)
  - h. Vacation or "idle-time" pay, no matter when paid; (3-19-99)
  - i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)
  - j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Sec. 72-1328, Idaho Code. (3-19-99)
  - k. Noncash payments for farm work, if such payments would be classified as wages for federal tax purposes. Ref. Sec. 72-1328, Idaho Code. ( )

**03. Exclusions From Wages.** The term "wages" described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

- a. Prizes or gifts for special occasions which are expressions of good will; (3-19-99)
- b. Bonuses paid for signing a contract; (3-19-99)
- c. Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-19-99)
- d. Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)
- e. Rental charge for personal equipment provided by the employee on the job: if (3-19-99)
  - i. There is a rental agreement; and (3-19-99)
  - ii. The worker has received a reasonable wage for services performed; and (3-19-99)
  - iii. The fees are held separately on the employer's records. (3-19-99)
- f. Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)
- g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)

- and
- i. To have paid or incurred reasonable job related expenses while performing services as employees; (3-19-99)
  - ii. To account adequately to the employer for these expenses; and (3-19-99)
  - iii. To return any excess reimbursement or allowance. (3-19-99)
  - h. Payments for employee travel expenses, provided: (3-19-99)
    - i. Payments are job related expenses while performing services; and (3-19-99)
    - ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)
    - iii. Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)
  - i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)
  - j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Sec. 72-1328, Idaho Code. ( )

**04. Treatment Of Limited Liability Companies.** For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. (4-5-00)

**05. Domestic Employment.** Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by: ( )

- a. Cooks; ( )
- b. Waiters; ( )
- c. Butlers; ( )
- d. Maids; ( )
- e. Janitors; ( )
- f. Laundresses; ( )
- g. Furnacemen; ( )
- h. Handymen; ( )
- i. Gardeners; ( )
- j. Housekeepers; ( )
- k. Housemothers; and ( )
- l. In-home caregivers. Ref. Sec. 72-1315, Idaho Code. ( )

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU**  
**DOCKET NO. 09-0135-0102**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

Rule 09.01.35, Section 221 is being changed to clarify that an employer is given appeal rights in all cases involving requests for transfer of experience rates. Also, to clarify that where an employer sells a business to another employer, the second employer may use the taxable wage base of the first employer for purposes of calculating a taxable wage base only if the experience rate of the predecessor employer has been transferred to the successor employer. Section 132 will be renumbered to remove Subsection 132.04 which is being replaced by the changes to Section 221.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being amended to clarify an existing rule that has caused confusion.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Whitworth, 208/334-6385.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull  
U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
208/334-6271  
Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0135-0102**

**132. STATUS.**

**01. Status Information Required.** To determine the taxable status of an employer, detailed information regarding the business activities of any person engaged in business in Idaho shall be submitted as

required, including articles of incorporation, articles of organization, minutes of boards of directors, financial reports, partnership agreements, number of employees, wages paid, employment contracts, income tax records, and any other records or other information which may tend to establish such person's status. Ref. Sec. 72-1337, Idaho Code.

(3-19-99)

**02. Notification To Liable Employers.** Employers who are determined liable for contributions shall be notified by letter of their status as a covered employer. The employer's appeals rights to the determination shall also be explained in the letter. Ref. Sec. 72-1353 and 72-1361, Idaho Code.

(3-19-99)

**03. Status Determination.** A formal determination of status shall be prepared if an employer questions his liability. This status determination shall state the received facts and arrive at a logical conclusion based on these facts and precedent appeals decisions or legal opinions. Ref. Sec. 72-1353, Idaho Code.

(3-19-99)

~~**04. Ineligible To Assume Experience Rating Record.** Upon the determination that the successor to a business is ineligible to assume the predecessor's experience rating, a formal determination to this effect, explaining the reason for the decision and outlining the appeal rights, shall be mailed to that employer. Ref. Sec. 72-1351, Idaho Code.~~

~~(3-19-99)~~

**054. Employer Quarterly Report Forms.** Employers who are liable to pay tax contributions, or who have elected a cost reimbursement option in lieu of tax contributions, shall submit quarterly report forms in any form or medium designated by the director or his authorized representative. Ref. Sec. 72-1333, Idaho Code.

(3-19-99)

**065. Update Requirements.** Covered employers shall furnish the Department with pertinent status data when new or additional information is available. Ref. Sec. 72-1337, Idaho Code.

(3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**221. TRANSFER OF EXPERIENCE RATING.**

Upon request, employers shall be informed of the requirements for transferring an experience rating record. ~~Employers will be notified of any changes in rating, occurring as a result of transfers.~~ A status determination ~~will~~ shall be issued to interested parties when an experience rating record transfer request is ~~denied~~ made. Ref. Sec. 72-1351, Idaho Code.

~~(3-19-99)~~( )

**01. Mandatory Transfer Of Deficit Rate.** An experience rating record transfer shall be mandatory if: There is a continuity of ownership or management between the predecessor and successor, and the predecessor covered employer had a deficit experience rating record as of the last computation date. The parties in interest shall be notified of such transfer of deficit experience as determined from the facts applicable to the case. Such determination may be appealed as provided in Ref. Sec. 72-1351, 72-1361, Idaho Code.

(3-19-99)

**02. Continued Predecessor Employment For Liquidation.** When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Sec. 72-1351, Idaho Code.

(3-19-99)

**03. Management ~~To~~ Or Ownership Unchanged.** For the purposes of Sections 72-1351(4)(a) and (b), Idaho Code, management and/or ownership shall be considered substantially the same if at least fifty percent (50%) of the business enterprise of the successor is owned or controlled by individuals who, immediately preceding the change in the legal entity, owned or controlled fifty percent (50%) or more of the enterprise. Ref. Sec. 72-1351, Idaho Code.

~~(3-19-99)~~( )

**04. Wage Paid By Predecessor.** The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sec. 72-1349(1), 72-1351(4), and 72-1350(8), Idaho Code.

( )

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU**  
**DOCKET NO. 09-0135-0103**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

Recently, the U.S. Supreme Court ruled that for certain purposes, awards of back pay of wages to workers would be reported in the year the back wages are paid. This rule seeks to clarify which quarter the back wages will be assigned for purposes of calculating unemployment benefits. Changes to the existing rule provide clarification as to which calendar quarters to assign back wages in order to determine when employment security contributions on those wages are due and payable.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being amended to clarify an existing rule that has caused confusion.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Whitworth, 208/334-6385.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Jean Hull  
U.I. Administrator  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
208/334-6271  
Fax: 208/334-6301

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0135-0103**

**262. DETERMINATION OF PROPER QUARTER IN WHICH TO ASSIGN AND REPORT WAGES.**

**01. Wage Assignment To Proper Calendar Quarter.** Wages shall be assigned to the calendar quarter in which the wages were: (3-19-99)

a. Actually paid to the employee in accordance with the employer's usual and customary payday as established by law or past practice; or (3-30-01)

b. Due the employee in accordance with the employer's usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or (3-30-01)

c. Not paid on the usual or customary payday as established by law or past practice but set apart on the employer's books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered. Ref. Sec. 72-1367, Idaho Code. (3-19-99)

**02. Draws And Advances On Wages.** Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a "draw" by which such action, another "regular" payday appears to have been created. (3-19-99)

**03. Judgments Of Wages.** Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be assigned to reported in the quarter or quarters in which ~~the employer would have reported such wages or as stipulated in~~ the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different. Ref. Sec. 72-1328, Idaho Code. ~~(3-19-99)~~( )

**04. Awarded Damages Against Employers.** Amounts awarded to the claimant as a penalty or damages against the employer, other than for lost wages, do not constitute wages. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.40 - RULES OF THE JOB TRAINING PARTNERSHIP ACT**  
**DOCKET NO. 09-0140-0101**  
**NOTICE OF PROPOSED RULEMAKING (REPEAL)**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

The federal Job Training Partnership Act (JTPA) was superseded by the federal Workforce Investment Act (WIA). WIA was implemented effective July 1, 2000. The superseded JTPA rules are being repealed in their entirety.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rules are being repealed in their entirety.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cheryl Brush, 208/334-6303.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 18th day of July, 2001.

Cheryl Brush  
Bureau Chief, Workforce Systems  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
208/334-6303  
Fax: 208/332-7417

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**THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.**

**IDAPA 10 - IDAHO BOARD OF PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS**

**10.01.01 - RULES OF PROCEDURE**

**DOCKET NO. 10-0101-0101**

**NOTICE OF TEMPORARY AND PROPOSED RULEMAKING**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 5, 2001.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

The rule amendments would discontinue the practice of allowing candidates who fail to pass an examination the opportunity to review questions, if those questions will be repeated on subsequent administrations of the examination. They would more closely align the academic requirements for equivalency with an accredited engineering program for those who do not possess an engineering degree. They would eliminate references to "corporation" where the more inclusive term "business entity" is more appropriate.

**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:

In order to protect the public health, safety, or welfare, persons who fail a licensing exam should not be allowed to review problems that might appear on a subsequent exam. To do so might give them an unfair advantage over those first-time takers of the exam, resulting in a person who is not truly minimally competent being issued a license. In order to confer the benefit of the opportunity of taking a licensing exam or receiving a license by comity to those who do not possess an engineering degree, but have completed coursework normally associated with an engineering curriculum, the specific courses necessary to demonstrate equivalency should align with those commonly associated with an accredited program.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule changes are necessary to protect the public, are primarily administrative in nature, and comply with current statutes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact David L. Curtis at (208) 334-3860.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2001.

DATED this 16<sup>th</sup> day of July, 2001.

David L. Curtis, P.E., Executive Director  
Board of Registration of Professional Engineers and Professional Land Surveyors

600 S. Orchard, Suite A  
Boise, Idaho 83705-1242  
Telephone (208) 334-3860  
Fax (208) 334-2008

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0101-0101**

**011. FEES.**

**01. Applications And Renewals.** All fees shall be set by the Board in the following categories and shall in no event be more than the amount specified in Sections 54-1213, 54-1214, 54-1216, 54-1219 and 54-1223, Idaho Code. Fees are not refundable. (4-5-00)

- a. Registration as a professional engineer or professional land surveyor by examination. (7-1-93)
- b. Certification as an engineer-in-training or land surveyor-in-training by examination. (7-1-93)
- c. Certification for a ~~corporation~~ business entity applying for a certificate of authorization to practice or offer to practice engineering or land surveying. ~~(7-1-93)~~(9-5-01)T
- d. Applications for reexamination in professional engineering, professional land surveying, engineer-in-training or land surveyor-in-training. (7-1-93)
- e. Renewals for professional engineers, professional land surveyors, engineers-in-training, land surveyors-in-training and ~~corporations~~ business entities. ~~(7-1-93)~~(9-5-01)T
- f. Registration for professional engineers or professional land surveyors by comity registration. (7-1-93)

**02. Late Or Denied Renewals.** Failure on the part of any registrant or ~~corporation~~ business entity to renew their fees prior to their expiration shall not deprive such persons or ~~corporation~~ business entity of the right of renewal, but the fees to be paid for renewal after their expiration shall be increased as prescribed in Section 54-1216, Idaho Code. ~~(3-30-01)~~(9-5-01)T

**03. Reexaminations.** Separate fees will be assessed for each examination and such fees shall accompany all applications for examination for professional engineers, professional land surveyors, engineers-in-training, and land surveyors-in-training. (7-1-93)

**04. Schedule Of Fees.** The schedule of fees as determined by the Board shall be furnished to applicants with application forms. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**013. PUBLICATIONS.**

**01. Annual Report.** An annual report shall be submitted to the governor, the contents of which shall comply with the provisions of Section 54-1210, Idaho Code. (7-1-93)

**02. Roster.** A roster of professional engineers, professional land surveyors, engineers-in-training, land surveyors-in-training, and engineering and land surveying ~~corporations~~ business entities in good standing and registrants and certificate holders in the retired status as provided in these rules shall be maintained in an electronic format available to the public. (~~3-30-01~~)(9-5-01)T

**03. Retired Status.** Those registrants who have reached the age of sixty-five (65) (or are totally and permanently disabled) and are retiring from practice may be listed in the retired section of the Roster, upon application to the Board. The biennial fee for being thus listed shall be established by the Board. Such listing does not permit a registrant to engage in the practice of engineering or land surveying. The fee for reinstatement to active practice shall be as required for delayed renewals in Section 54-1216, Idaho Code. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. APPLICATION FOR REGISTRATION OR CERTIFICATION.**

**01. Forms.** Application forms for registration as a professional engineer, or professional land surveyor, certification as an engineer-in-training, land surveyor-in-training or certificates of authorization to practice or offer to practice engineering or land surveying by a ~~corporation~~ business entity may be obtained from the office of the Executive Director of the Board of Professional Engineers and Professional Land Surveyors. (~~4-5-00~~)(9-5-01)T

**02. Completion Of Application.** Applications shall be made on such forms as may be prescribed by the Board. An application which is not fully completed by the applicant need not be considered or acted upon by the Board. The application by a ~~corporation~~ business entity for a certificate of authorization to practice or offer to practice engineering or land surveying must set forth their address, and name and address of the individual, or individuals, duly registered to practice engineering or land surveying in this state, who will be in responsible charge of engineering or land surveying services offered or rendered by the ~~corporation~~ business entity in this state. (~~4-5-00~~)(9-5-01)T

**03. Dates Of Submittal.** Applications for the Spring and Fall examination, respectively, must be received by the Executive Director or postmarked by January 10 or August 1 of any year. In order for the Board to be able to verify experience, only experience up to the date of submittal of the application will be considered as valid. Experience anticipated between the date of the application submittal and the date of the examination or issuance of registration will not be considered. For students, the application filing date for the Fundamentals of Engineering examination may be extended at the discretion of the Board. Except for military personnel stationed in Idaho, only Idaho residents and students at Idaho universities will be assigned to examinations, unless otherwise approved by the Board. (3-30-01)

**04. Confidentiality Of References.** All information received from references named by the applicant shall be held in confidence by the Board. Neither members of the Board nor relatives of the applicant by blood or marriage shall be named or accepted as references. (7-1-93)

**05. Minimum Standards - References.** An applicant may not be admitted to the examination until satisfactory replies have been received from a minimum of five (5) of his references for professional engineers or land surveyors and three (3) references for engineers-in-training and land surveyors-in-training. It shall be the responsibility of each applicant to furnish their references with the forms prescribed by the Board. (3-30-01)

**017. EXAMINATIONS.**

**01. Semiannually Or Annually; Special Or Oral Examination.** Examinations for professional engineer, professional land surveyor, engineer-in-training and land surveyor-in-training will be held annually or semi-annually, the exact time and place to be determined by the Board. Special oral or written examinations during the year may be given by the Board. (7-1-93)

**02. Eligibility For Examinations; Educational Requirements.** The application for registration for

professional engineer, professional land surveyor or certification of engineer-in-training or land surveyor-in-training, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before admittance to any examination. (7-1-93)

a. In regard to educational requirements, the Board will consider as unconditionally approved only those engineering curricula which are accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). Non-ABET accredited engineering curricula will be considered by the Board on their specific merits. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. An approved four-year (4) Bachelor of Technology (B.T.) engineering curriculum is not considered equal to an approved Bachelor of Science engineering curriculum. The Board will require additional experience for applicants with B.T. degrees. (7-1-93)

b. An applicant who has completed a four (4) year bachelor degree program in a major other than engineering must have completed a minimum of ~~twelve~~ fifteen (15) semester credits of Engineering Science at a Sophomore and Junior and Senior level, ~~six~~ (6) semester credits of Engineering Design related courses at a Senior level, ~~six~~ twelve (12) semester credits of Advanced Mathematics through including Calculus and Differential Equations, and ~~six~~ twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and two (2) semester credits of Engineering Economics other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for assignment to the examination for certification as an Engineer-in-Training. ~~(4-5-00)~~(9-5-01)T

i. Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to insure that the above requirements are met. (7-1-93)

ii. Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering. (7-1-93)

c. In addition to the minimum requirements set forth in Section 54-1212, Idaho Code, a person who desires to be qualified by examination in the field of structural engineering shall meet the following requirements: (4-22-94)

i. Be a registered professional engineer in Idaho. (7-1-93)

ii. Have two (2) years of work experience in the field of structural engineering after being registered as a professional engineer. The Principles and Practice of Engineering examination for Structural Engineering will cover the practice of structural engineering to test the applicant's fitness to assume responsibility for engineering work affecting the public health, safety and welfare. The examination shall be sixteen (16) hours. (7-1-93)

d. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has received a master's degree from an U.S. institution which has a bachelor degree program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology in the discipline of the applicant's master's degree, and, in addition, has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-5-00)

**03. Notification To Applicant By Board.** Notification of assignment or non-assignment to the examination will be furnished to the applicant at least thirty (30) days prior to the date of the examination. (4-5-00)

**04. Notification To Board By Applicant.** The applicant shall, at least fifteen (15) days before an

examination, notify the Executive Director of the Board whether or not he will appear for the examination. Examinations will be given only to those who have so notified the Board. (4-5-00)

**05. Excused Non-Attendance At Exam.** In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

**06. Two (2) Examinations For Engineering Registration.** The complete examining procedure for registration as a professional engineer consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer-in-training certification, and the second is the Principles and Practice of Engineering for professional engineer registration. Each examination shall be eight (8) hours in length. Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering curriculum. A certificate as an Engineer-in-Training will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by experience. (4-22-94)

**07. Fundamentals Of Engineering.** The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination may also cover subject matters that are specific to the engineering discipline of the applicants education. (4-5-00)

**08. Principles And Practice of Engineering - Disciplines.** The Principles and Practice of Engineering examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of examinations in disciplines other than those for which examinations may be available from NCEES. (4-22-94)

**09. Two Examinations For Land Surveying Registration.** The complete examining procedure for registration as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Land Surveying examination for land surveyors-in-training certification, and the second is the Principles and Practice of Land Surveying registration. Each examination will be a total of eight (8) hours in length. Having passed the Fundamentals of Land Surveying examination, applicants will be required to take the Principles and Practice of Land Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of Land Surveying examination may consist of separate modules, each of which must be passed. (4-5-00)

**10. Oral Or Unassembled Examinations.** An oral examination or unassembled written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

**11. Special Examinations.** A special examination, written or oral or both, may be required in certain instances where the applicant is seeking registration through comity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or registration in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (7-1-93)

**12. Grading.** Each land surveyor-in-training, engineer-in-training and professional engineer applicant

must normally attain a scaled score of seventy (70) or above on the entire eight (8) hour examination before being awarded certification or registration. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each section of the examination. (4-5-00)

**13. Use Of NCEES Examinations.** Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineers-in-training, professional land surveyors, and land surveyors-in-training may be used by the Board. The examination for the field of structural engineering shall be the sixteen (16) hour examination as determined by the Board. (7-1-93)

**14. Review Of Examination By Examinee. (9-5-01)T**

a. Examinees who fail an examination which includes any “free-response” or “essay” type problems shall be allowed to review only the “free-response” or “essay” type problems on their examination. Examinees will only be allowed to review those questions attempted during the examinee’s last taking of the examination. Examinees shall be allowed a review time equal to one-half (1/2) the time originally allowed to take the “free-response or “essay” portion of the examination. The review shall be monitored by a Board member or Board representative. Paper will be provided by the Board and may not be taken away from the review site. A hand-held calculator not having word processing capabilities and not having a “QWERTY” keyboard may be used by the applicant during the review. Examinees in the Principles and Practice of Engineering examination may submit a rescoring request on the “free-response” or “essay” type problems attempted. Examinees who submit a rescoring request may use their own reference materials to complete the rescoring request. (~~3-30-01~~)(9-5-01)T

b. Examinees who fail an examination which consists partly of “free-response” or “essay” and partly of other type problems shall be provided a diagnostic analysis of their performance on the non “free-response” or non “essay” problems, but they will not be allowed to review the non “free-response” or non “essay” type problems attempted in the examination. (9-5-01)T

c. Examinees who fail an examination which does not contain “free-response” or “essay” type problems shall be provided a diagnostic analysis of their performance, but they will not be allowed to review the actual problems attempted in the examination. (9-5-01)T

**15. Disposal Of Used Examination Pamphlets And Answer Sheets.** The Executive Director of the Board is authorized by the Board to dispose of used examination solution pamphlets and answer sheets after the first anniversary date after the examination was given. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**019. REGISTRANTS OR CERTIFICATE HOLDERS OF OTHER STATES AND BOARDS.**

**01. Interstate Registration Evaluation.** Each application for Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated with respect to the requirements of the Idaho law. (4-5-00)

a. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is not pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-5-00)

b. An applicant who has completed a four (4) year bachelor degree program in a major other than engineering must have completed a minimum of ~~twelve~~ fifteen (125) semester credits of Engineering Science at a Sophomore and Junior and Senior level, six (6) semester credits of Engineering Design related courses at a Senior level, ~~six~~ twelve (612) semester credits of Advanced Mathematics through including Calculus and Differential Equations, and ~~six~~ twelve (612) semester credits of basic science courses including Chemistry, calculus-based Physics and two (2) semester credits of Engineering Economics other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. ~~(4-5-00)~~(9-5-01)T

**02. Denials Or Special Examinations.** An application from a registrant of another state, territory or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. If the applicant is assigned to examination no additional fee shall be required. (7-1-93)

**03. ~~Corporate~~ Business Entity Requirements.** No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a ~~corporation~~ business entity authorized to practice professional engineering or professional land surveying or both in one (1) or more states, territories or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly registered to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the ~~corporation~~ business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. ~~(7-1-93)~~(9-5-01)T

**IDAPA 10 - IDAHO BOARD OF PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS**

**10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY**

**DOCKET NO. 10-0102-0101**

**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1208, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

The proposed rule would substitute the term "business entity" for the term "corporation" in keeping with terminology now contained in Title 54, Chapter 12, Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are primarily housekeeping in nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 334-3860.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2001

DATED this 16th day of July, 2001.

David L. Curtis, P.E., Executive Director  
Board of Registration of Professional Engineers and Professional Land Surveyors  
600 S. Orchard, Suite A, Boise, Idaho 83705-1242  
Telephone (208) 334-3860 / Fax (208) 334-2008

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0102-0101**

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as Idaho Board of Registration of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.02, "Rules of Professional Responsibility". (7-1-93)

**02. Scope.** In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following Rules of Professional Responsibility, hereinafter referred to as Rules, have been promulgated in accordance with Section 54-1208, Idaho Code, and shall be binding in the state of Idaho upon every person holding a certificate of registration as a Professional Engineer or Professional Land Surveyor, on all entities authorized to offer

or perform engineering or land surveying services through a ~~corporation~~ business entity or other legal entity and on every person holding a certificate as an engineer-in-training or a certificate as a land surveyor-in-training. Each Registrant and Certificate Holder under the laws of the state of Idaho is charged with being familiar with these Rules and knowledgeable in their application to the practice of engineering and land surveying. Such application shall include the recognition that the practice of engineering or the practice of land surveying is a privilege and the Registrant or Certificate Holder shall be forthright and candid in statements or written responses to the Board, or its representatives, on matters pertaining to these Rules. All Registrants or Certificate Holders in their original application, and for renewals thereof, shall certify that they have read and agree to abide by the Rules which are in force at the time of application or renewal. These Rules shall not be a basis for action involving civil liability, however, failure to obey these Rules may subject a Registrant or Certificate Holder to Board action pursuant to Chapter 12, Title 54, Idaho Code. (7-1-98)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. DEFINITIONS.**

For the purposes of these rules, the following terms are used as defined below: (7-1-93)

**01. Board.** The Board of Registration of Professional Engineers and Professional Land Surveyors. (7-1-93)

**02. Certificate Holder.** Any person holding a current certificate as an Engineer-in-Training or a Land Surveyor-in-Training or a ~~corporation~~ business entity (which is also herein referred to as a "person") holding a current certificate of authorization, which has been duly issued by the Board. (7-1-98)(\_\_\_\_)

**03. Registrant.** Any person holding a current certificate of registration as a Professional Engineer, a Professional Land Surveyor, or a combination thereof, which has been duly issued by the Board. (7-1-98)

**04. Misconduct.** A violation or attempt to violate these rules of professional responsibility or to knowingly assist or induce another to do so, or do so through the acts of another; commission of a criminal act that reflects adversely on the registrant's or certificate holder's honesty, trustworthiness or fitness as a registrant or certificate holder in other respects; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; state or imply an ability to influence improperly a government agency or official. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. IMPROPER CONDUCT.**

**01. Fraudulent Or Dishonest Enterprises.** A Registrant or Certificate Holder shall not knowingly associate with, or permit the use of his name or the firm name in a business venture by any person or firm which it is known, or there is reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature. (7-1-93)

**02. Confidentiality.** Registrants or Certificate Holders shall not reveal confidential facts, data or information obtained in a professional capacity without prior written consent of the client or employer except as authorized or required by law. (7-1-98)

**03. Actions By Other Jurisdictions.** The revocation, suspension or denial of a license to practice Professional Engineering or Professional Land Surveying, as an individual or through a ~~corporation~~ business entity, in another jurisdiction, for reasons or causes which the Board finds would constitute a violation of the Idaho laws regulating the practice of Engineering and Land Surveying, or any code or rules promulgated by the Board, shall be sufficient cause after a hearing for the denial, suspension or revocation of a certificate of registration or certificate of authorization to practice engineering or land surveying in this state. (7-1-93)(\_\_\_\_)

**IDAPA 14 - BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS**

**14.01.01 - RULES OF PROCEDURE OF THE BOARD OF REGISTRATION  
OF PROFESSIONAL GEOLOGISTS**

**DOCKET NO. 14-0101-0101**

**NOTICE OF TEMPORARY AND PROPOSED RULEMAKING**

**EFFECTIVE DATE:** The effective date of the temporary rules is July 1, 2001.

**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 Sections 54-2808 and 54-2814, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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

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

The Idaho Board of Registration for Professional Geologists is becoming a member of the Association of State Boards of Geology, a national organization which provides examinations to states requiring an examination as part of the registration requirement. The national organization requires a fee for each exam provided. The proposed rules clarify the various fees involved in examination, certification, reexamination, and replacement of cost certificates and to address examination-related administrative issues. The proposed rules create a reduced renewal rate for licensees seventy (70) or older.

**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: The rule change is necessary to protect the public health, safety or welfare.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The Idaho Board anticipates utilizing a national examination beginning in September 2001. Applicants will be required to pay the appropriate fee for the Fundamentals Examination and the Principles and Practice Examination.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule changes are necessary pursuant to the Board's utilization of a national examination provided by the Association of State Boards of Geology.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Allen Lockhart, Secretary of the Board, (208) 334-2268.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2001.

DATED this 23rd day of July 2001.

Allen Lockhart  
Secretary of the Board  
Idaho Board of Professional Geologists  
550 W. State St.  
P. O. Box 83720, Boise, ID 83720-0033  
Telephone: (208) 334-2268

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 14-0101-0101**

**100. GENERAL PROVISIONS.**

**01. Offices.** The principal office of the board shall be maintained at ~~Room B-83~~, 6550 West State Street, Boise, Idaho. The mailing address is ~~Statehouse~~ P.O. Box 83720, Boise, Idaho 83720-0033; to which all correspondence, including remittances and renewal fees, shall be directed. The telephone number of the board is (208) 334-2268. ~~(7-1-93)~~(7-1-01)T

**02. Meetings.** The board shall meet at least once each year at the call of the chairman, within ninety (90) days following the annual examinations; the board shall elect a chairman, vice-chairman, and secretary at such annual meeting. In addition to this annual meeting, the chairman may call special meetings from time to time when, in his opinion, it is deemed necessary, or upon the written request of any three (3) members of the board. (7-1-93)

**03. Order Of Business.** The order of business at meetings shall be as follows: (7-1-93)

a. Reading of minutes; (7-1-93)

b. Financial report; (7-1-93)

c. Reports of officers; (7-1-93)

d. Reports of committees; (7-1-93)

e. Reading of communications; (7-1-93)

f. Unfinished business; (7-1-93)

g. New business; (7-1-93)

h. Consideration of applications, examinations, and fees; (7-1-93)

i. Consideration of petitions, complaints, suspensions, and revocations; (7-1-93)

j. Miscellaneous; (7-1-93)

k. Adjournment. (7-1-93)

l. Robert's Rules of Order shall govern procedure of the board except as otherwise provided by the act or these rules. (7-1-93)

**04. Officers.** Officers elected from the board shall be chairman, vice-chairman, and secretary. An assistant secretary may be selected who need not be a member of the board. (7-1-93)

a. The chairman shall be the executive head of the board; shall when present preside at meetings; shall appoint committees; and shall perform all the duties pertaining to the office of chairman. (7-1-93)

b. The vice-chairman shall, in the absence or incapacity of the chairman, exercise the duties and possess all the powers of the chairman. (7-1-93)

c. The secretary shall, with assistance of an assistant secretary and staff as authorized by the board: (7-1-93)

i. Keep correct minutes of the board and furnish a copy to all members of the board; (7-1-93)

- ii. Send written notice of all regular and special board meetings to each member not less than ten (10) days in advance thereof; (7-1-93)
- iii. Examine each application for registration and bring about necessary corrections or the supplying of missing or essential data in connection with such application prior to consideration thereof by the board; (7-1-93)
- iv. Address inquiries, where deemed necessary, to references or applicants to verify qualifications, experience, or character; (7-1-93)
- v. Make arrangements, as required by the board, for examinations, interviews, or hearings; (7-1-93)
- vi. Report to the board members the result of every examination and other evidence of qualification of each applicant; (7-1-93)
- vii. Prepare the required annual report and roster; (7-1-93)
- viii. Keep all records, including minutes, register of applicants and registrants, and roster; (7-1-93)
- ix. Receive and deposit all funds and fees, as provided by the act, and keep records of all receipts and disbursements; (7-1-93)
- x. Attend to all official correspondence of the board; (7-1-93)
- xi. Perform all other duties as prescribed by the act or which normally pertain to the office of secretary. (7-1-93)

**05. Committees.** Regular or special committees may be appointed by the chairman, as necessary, to perform special duties and shall present reports to the board at the time specified or at the earliest regular or special meeting of the board. (7-1-93)

**06. Quorum.** As provided in the act, a quorum shall be at least three (3) members of the board legally holding office at the time of meeting. Official business of the board shall be conducted only at board meetings with a quorum present. (7-1-93)

**07. Fees.** The fees for registration under the act shall be the following: ~~(7-1-93)~~(7-1-01)T

a. The fee for ~~registration application~~ under the act shall be one hundred dollars (\$100), ~~eighty dollars (\$80) of which shall accompany the application and the remaining twenty dollars (\$20) paid prior to issuance of the certificate.~~ ~~(7-1-93)~~(7-1-01)T

b. ~~The A non-refundable fee for reexamination, for persons failing the first examination, shall be of fifty twenty-five dollars (\$5025) is set for processing each examination.~~ ~~(7-1-93)~~(7-1-01)T

i. The fee for the National examination is set at the current ASBOG rate for each Fundamentals examination and for each Principles and Practice examination. (7-1-01)T

ii. The fee for reexamination of a candidate failing his first examination shall be the same as Subsection 100.07.b. (7-1-01)T

c. The fee for the initial certificate shall be twenty dollars (\$20) and the fee for replacing a lost, destroyed or mutilated certificate shall be ~~ten~~ twenty dollars (\$20). ~~(7-1-93)~~(7-1-01)T

d. The fee for annual renewal of registration shall be as determined each year by the board, but shall not exceed one hundred dollars (\$100). Renewal fees are due annually by June 30. The amount of the first annual renewal fee for a registrant may, at the discretion of the board, be reduced appropriately on a prorated quarterly basis based upon the initial registration date in the preceding fiscal year. (7-1-93)

i. The fee for annual renewal of registration for any person seventy (70) years of age or older as of June 1 shall be half the current renewal fee. (7-1-01)T

ii. The secretary shall notify each registrant by mail, to the last recorded address, not later than June 1 of each year giving date of expiration of the registrant's certificate and the amount of the renewal fee due by June 30 for the following year. (7-1-93)

iii. Failure on the part of any registrant to renew the certificate in June shall not deprive such person of the right of renewal, but the fee to be paid for renewal after June 30 shall be increased as prescribed in the act. (7-1-93)

**08. Certificates.** Certificates of registration shall be issued to each registrant, as prescribed by the act, on forms adopted by the board. Certificates shall be displayed by registrants in their place of business. A new certificate may be issued by the board, to replace one lost, destroyed or mutilated. Each certificate shall bear an individual number, as assigned to that particular registrant by the board, which number shall be included in the annual roster of registrants prepared by the secretary. (7-1-93)

**09. Seals.** (7-1-93)

a. The official seal of the board shall consist of a seal of the state of Idaho surrounded with the words Board of Registration for Professional Geologists. (7-1-93)

b. The board has adopted a seal similar to that illustrated for use of each registrant. To make use of the seal valid, registrant shall first write in ink his signature and date and then stamp over same with the seal. Either impression type or rubber stamp seal shall be valid.

SEE "APPENDIX A" AT END OF THIS CHAPTER

(7-1-93)

**10. Address Change.** Each applicant and registrant shall notify the board within sixty (60) days of any and all changes of address, giving both old and new address. (7-1-93)

**11. Annual Report.** An annual report shall be published by the board and mailed to the governor, secretary of state, each registrant, and to the public (upon request). The annual report shall contain, among other things: (7-1-93)

a. Copy of the act; (7-1-93)

b. Rules of procedure; (7-1-93)

c. Annual report of the board, summarizing all transactions; (7-1-93)

d. Excerpts or summary of annual financial report; (7-1-93)

e. Roster of registrants; (7-1-93)

f. Code of ethics; (7-1-93)

g. Current fee schedules; (7-1-93)

**12. Amendments.** The rules of procedure may be amended by a majority vote of board membership at any regular or special meeting of the board, after prior notice by publication as may be required by the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. EXAMINATIONS.**

**01. Examination Required.** Every applicant for registration shall take and pass an examination as prescribed by the board except as may be specifically exempted from such examination under the terms of the act. (7-1-93)

**02. Eligibility.** The following shall be considered as minimum evidence that the applicant is qualified to take an examination for registration as a professional geologist: (7-1-93)

a. Completion of thirty (30) semester units in courses in geological science leading to a degree in the geological sciences of which at least twenty-four (24) units are in third or fourth year, and/or graduate courses; and (7-1-93)

b. Have at least seven (7) years of professional geological work which shall include either a minimum of three (3) years of professional geological work under the supervision of a registered geologist, or, wherein the applicant has been under the direct supervision of an individual acceptable to the board, or, wherein the applicant has demonstrated five (5) years of progressive experience in responsible charge of geological work that is acceptable to the board. (7-1-93)

i. Each year of undergraduate study in the geological sciences shall count as one-half (1/2) year of training up to a maximum of two (2) years, and each year of graduate study or research counts as a year of training. (7-1-93)

ii. Teaching in the geological sciences at the college level shall be credited year for year toward meeting the requirement in this category, provided that the total annual teaching experience includes six (6) semester units of third or fourth year or graduate courses. (7-1-93)

iii. Credit for undergraduate study, graduate study, and teaching individually, or in any combination thereof, shall in no case exceed a total of four (4) years toward meeting the requirement for at least seven (7) years of professional geological work as set forth above. (7-1-93)

iv. The ability of the applicant shall have been demonstrated by his having performed work in a responsible position, as the term is defined in Section 010. (7-1-93)

v. The applicant shall further be of good moral character and shall have filed a complete application with the board, accompanied by the required fee, as set forth elsewhere in these rules. (7-1-93)

**03. Authorization.** (7-1-93)

a. After the board evaluates the qualifications of an applicant and establishes his eligibility for examination, the secretary shall ~~assign that~~ notify the applicant ~~to take~~ of eligibility and the dates of the next scheduled examinations for which his application qualifies him. (7-1-93)(7-1-01)T

b. The secretary shall notify each applicant in writing of the acceptance or rejection of his application, and if rejected, the reason for the rejection. (7-1-93)

c. Not less than ~~thirty~~ forty-five (3045) days prior to the examination date, the ~~secretary~~ candidate shall give written notice to ~~each qualified applicant of the scheduled~~ the board of his intent to take the examination ~~date, time and location, and authorization to take the examination~~ shall submit all applicable testing fees in full. (7-1-93)(7-1-01)T

d. ~~The applicant shall at least eight (8) days before an examination notify the secretary of the board whether or not he will appear for the examination. Examinations will be given only to those who have so notified the board.~~ Not less than thirty (30) days prior to the examination date, the secretary shall give written notice to each

candidate that has previously given written notice and has paid his examination fees, of the date, time, and location(s) of the examination. ~~(7-1-93)~~(7-1-01)T

e. If an applicant cancels his test appearance at least fifteen (15) days prior to the testing date, a twenty-five dollar (\$25) handling fee will be withheld, and the remainder of the testing fee will be refunded. If the applicant fails to appear for the exam, or does not notify the board at least fifteen (15) days prior to the testing date, the entire fee will be forfeited. (7-1-01)T

**04. Scope Of Examination.** The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to supervise geologic projects as to insure the safety of life, health and property. The complete professional examination for registration as a professional geologist consists of two separate written examinations. The first is the Fundamentals of Geology examination, satisfactory completion of which permits certification as a Geologist-in-Training, covering subjects as are ordinarily given in college curricula. The second is the Principles and Practice of Geology examination which will cover the practice of geology and test the applicant's fitness for such practice affecting the public health, safety and welfare. Each examination shall be not more than eight (8) hours (one (1) day) in length, ~~divided into four-hour (4) morning and afternoon sessions.~~ Normally, applicants are eligible to take the Fundamentals of Geology examination upon graduation from an accredited college curriculum. Having passed the Fundamentals of Geology examination, applicants will be assigned to take the Principles and Practice examination at a later date when qualified by experience. Applicants qualified by experience to take the Principles and Practice examination, but who have not previously passed the Fundamentals of Geology examination, may take both examinations ~~on succeeding days.~~ The Fundamentals of Geology examination given to recent college graduates need not be the same as the Fundamentals of Geology examination given to applicants who have completed the experience requirement for registration. An oral examination, in addition to the prescribed written examination, may be required of any applicant. ~~(7-1-93)~~(7-1-01)T

**05. Geologist-In-Training.** An applicant may be permitted to take the Fundamentals of Geology examination prior to his completion of the years of geologic experience required for registration, as provided for in the act. Upon such satisfactory passage of the Fundamentals of Geology examination, the board shall issue a certificate of completion for this portion of the complete professional examination - with designation of the applicant as a Geologist-In-Training. Such certificate of completion shall constitute a credit toward the applicant's complete professional examination for a period not to exceed ten (10) years. The Geologist-In-Training, upon completion of the required years of geologic experience for registration, may submit a record of such experience in a complete application to the board and, upon approval by the board, be assigned to take the Principles and Practice examination. The possession of a Geologist-In-Training certificate by an applicant does not entitle the applicant to practice professional geology under the appropriate provisions of the act. (7-1-93)

**06. Reexamination.** A candidate failing his first examination may apply for reexamination at the expiration of six (6) months without filing a new application and shall be entitled to such reexamination on payment of ~~an additional~~ the reexamination fee of fifty dollars (\$50). A candidate who fails on reexamination must file a new application before he can again be admitted to examination, and such new application shall not be filed prior to one (1) year following the date of the last examination taken by the applicant; provided, however, that it shall be unlawful for a candidate failing any examination to practice professional geology under the appropriate provisions of the act. ~~(7-1-93)~~(7-1-01)T

**07. Time And Place.** (7-1-93)

a. The regular written examination for registration as a professional geologist shall be conducted ~~annually between January 1 and March 31~~ once or twice yearly. ~~(7-1-93)~~(7-1-01)T

b. The secretary shall make all arrangements necessary to provide sufficient help to conduct examinations and to provide adequate facilities at such locations throughout the state as may be required to accommodate the number of applicants to be examined. (7-1-93)

**08. Examination Irregularities.** (7-1-93)

a. Examinees are forbidden to receive any unauthorized assistance during the examination. Communication between examinees or possession of unauthorized matter or devices during the examination is

strictly prohibited. (7-1-93)

b. Only scheduled examinees, board members, the assistant secretary and authorized examination personnel shall be admitted to the examination room. (7-1-93)

**09. Grading.** (7-1-93)

a. As indicated in Subsection 300.04, the entire professional examination for registration as a professional geologist consists of two (2) separate written examinations. These examinations are referred to as the (1) Fundamentals of Geology, and (2) Principles and Practices examinations. Licensure as a professional geologist requires successful passage, as defined below, of both of these examinations. ~~(7-1-93)~~(7-1-01)T

b. Every applicant receiving an overall grade of seventy percent (70%) or more on the Fundamentals of Geology examination shall be deemed to have passed the examination, is thereby eligible to take the Principles and Practices examination, and will receive certification as a Geologist-in-Training, provided that the required fees have been paid. ~~(7-1-93)~~(7-1-01)T

c. Every applicant receiving a grade of seventy percent (70%) or more on ~~each part of~~ the Principles and Practices examination shall be deemed to have passed such examination and will be registered as a professional geologist, provided that all of the required fees have been paid. ~~(7-1-93)~~(7-1-01)T

d. Every applicant receiving a grade of less than seventy percent (70%) on either the Fundamentals of Geology examination or ~~on any part of~~ the Principles and Practices examination, shall be deemed to have failed such examination. Every applicant having failed shall have his application denied without prejudice, but shall be allowed to retake the failed examination in accordance with Subsection 300.06. ~~(7-1-93)~~(7-1-01)T

**10. Inspection Of Examination.** (7-1-93)

a. An applicant who fails to obtain a passing grade in the written examination may inspect his examination papers at such times and locations as may be designated by the secretary. Inspection of such examination papers shall be permitted within a thirty-day (30) period after receipt of notice by the applicant of his failure to pass the examination. (7-1-93)

b. At the time of inspection, no one other than the examinee or his attorney and a representative of the board shall have access to such examination papers. (7-1-93)

**11. Examination Appeal.** (7-1-93)

a. Within thirty (30) days after the date notice of the results of the examination has been mailed to him, an applicant who was unsuccessful in the examination may appeal, by petition, to the board for a review of his examination papers. (7-1-93)

b. The petition for review shall be made in writing stating the reason for such appeal and citing the item or items against which the request is directed. (7-1-93)

c. The board shall, upon receiving such petition for review, conduct a hearing in accordance with the applicable provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

**12. Retention Of Examinations.** The board shall retain examination results for at least one (1) year ~~all~~ *written examination papers submitted by applicants.* ~~(7-1-93)~~(7-1-01)T

**IDAPA 15 - OFFICE OF THE GOVERNOR - IDAHO COMMISSION ON AGING**

**15.01.01 - RULES GOVERNING SENIOR SERVICES PROGRAM**

**DOCKET NO. 15-0101-0101**

**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5003 (3), 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: This rulemaking changes the definition of the Support Services Technician to allow them to complete UAI's (assessment of need for services).

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the June 6, 2001 Idaho Administrative Bulletin, Volume 01-6, pages 32 through 36.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact: Ken Wilkes, Program Operations Manager, Idaho Commission on Aging at 208-334-3833.

DATED this 28th day of June, 2001.

Richard Juengling  
Acting Director  
Idaho Commission on Aging  
3380 Americana Terrace, Suite 120, Boise, ID 83706  
P.O. Box 83720, Boise, ID 83720-0007  
Phone: 208-334-3833  
FAX: 208-334-3033

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**IDAPA 15, TITLE 01, Chapter 01**

**RULES GOVERNING SENIOR SERVICES PROGRAM**

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

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 01-6, June 6, 2001, pages 32 through 36.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-0102**

**NOTICE OF TEMPORARY AND PROPOSED RULEMAKING**

**EFFECTIVE DATE:** The effective dated of the temporary rule are June 1, 2001 and August 1, 2001.

**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 5516(a) (Public Law 105-33) pertaining to Food Stamp Act of 1977, Section(s) 56-202(b) and 45-1004(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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 purpose and substance of the proposed rulemaking:

These rules revise requirements for application processing, alien income and eligibility, income determinations, resource determinations, claims management, and work criteria for single adults and families receiving Food Stamps.

**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 and to confer a benefit.

**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 rulemaking was not conducted because the rulemaking is to comply with deadlines in amendments to governing law or federal programs and to confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact LaDonna Larson at (208) 334-5818.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 26, 2001.

DATED this 10th day of July, 2001.

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) 332-7347 fax

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0102**

**003. ABBREVIATIONS.**

For the purposes of the Food Stamp Program, the following abbreviations are used.	(6-1-94)
<b>01. AABD.</b> Aid to the Aged, Blind and Disabled.	(9-1-94)
<b>02. ABAWD.</b> Able bodied adults without dependents.	(7-1-98)
<b>03. <u>AE.</u></b> <u>Administrative Error.</u>	<u>(8-1-01)T</u>
<b><del>034.</del> AFA.</b> Application for Assistance.	(7-1-98)
<b>045. ASVI.</b> Alien Status Verification Index.	(6-1-94)
<b>056. A/R.</b> The applicant or recipient.	(6-1-94)
<b>067. BEER.</b> Beneficiary Earnings Exchange Report.	(6-1-94)
<b>078. BENDEX.</b> Beneficiary Data Exchange.	(6-1-94)
<b>089. BIA.</b> Bureau of Indian Affairs.	(6-1-94)
<b><del>0910.</del> BIA GA.</b> Bureau of Indian Affairs-general assistance.	(6-1-94)
<b>101. CIP.</b> The Crisis Intervention Program administered by the Community Services Administration (CSA).	(6-1-94)
<b>112. COLA.</b> Cost of Living Allowance (COLA) data received from SSA.	(6-1-94)
<b>123. CSA.</b> The Community Services Administration of the U.S. Department of Housing and Urban Development.	(6-1-94)
<b>134. CSS.</b> Bureau of Child Support Services.	(7-1-98)
<b>145. DHW.</b> The Department of Health and Welfare in Idaho.	(6-1-94)
<b>156. DOL.</b> Department of Labor of the State of Idaho.	(7-1-98)
<b>167. EBT.</b> Electronic Benefit Transfer.	(7-1-98)
<b>178. EE.</b> Eligibility Examiner.	(6-1-94)
<b>189. EFNEP.</b> Expanded Food and Nutrition Education Program.	(6-1-94)
<b><del>1920.</del> FCS.</b> The Food and Nutrition Service of the U.S. Department of Agriculture.	(7-1-98)
<b>201. FFY.</b> Federal fiscal year.	(6-1-94)
<b>212. FmHA.</b> Farm Home Administration.	(8-1-94)
<b>223. FMV.</b> Fair market value.	(6-1-94)
<b>234. FQC.</b> Federal Quality Control.	(6-1-94)

<del>245.</del>	GA. General assistance.	(6-1-94)
<del>256.</del>	HUD. The U.S. Department of Housing and Urban Development.	(6-1-94)
<del>267.</del>	IEVS. Income and Eligibility Verification Systems.	(6-1-94)
<del>278.</del>	IHE. Inadvertent household error.	(6-1-94)
<del>289.</del>	INS. Immigration and Naturalization Service	(6-1-94)
<del>2930.</del>	IPV. Intentional program violation.	(6-1-94)
<del>301.</del>	IRS. Internal Revenue Service.	(6-1-94)
<del>312.</del>	JSAP. Job Search Assistance Program.	(6-1-94)
<del>32.</del>	<del>JTPA. Job Training Partnership Act.</del>	<del>(6-1-94)</del>
33.	PA. Public Assistance.	(6-1-94)
34.	RSDI. Retirement, Survivors, Disability Insurance received from SSA.	(6-1-94)
35.	SAVE. Systematic Alien Verification for Entitlements.	(6-1-94)
36.	SAW. Special Agricultural Worker.	(6-1-94)
37.	SDX. State Data Exchange.	(6-1-94)
38.	SQC. State Quality Control.	(6-1-94)
39.	SRS. Self Reliance Specialist.	(7-1-98)
40.	SUA. Standard utility allowance.	(6-1-94)
41.	SSA. Social Security Administration.	(6-1-94)
42.	SSI. The Federal Supplemental Security Income Program for the aged, blind or disabled.	(6-1-94)
43.	SSN. Social Security number.	(6-1-94)
44.	SWICA. State Wage Information Collection Agency.	(6-1-94)
45.	TAFI. Temporary Assistance for Families in Idaho.	(7-1-98)
<u>46.</u>	<u>TOP. Treasury Offset Program.</u>	<u>(8-1-01)T</u>
<del>467.</del>	TPQY. Third Party Query.	(6-1-94)
<del>478.</del>	UI. Unemployment Insurance.	(6-1-94)
<del>489.</del>	USDA. United States Department of Agriculture.	(6-1-94)
<del>4950.</del>	VA. The Veterans Administration.	(6-1-94)
<u>51.</u>	<u>WIA. The Workforce Investment Act.</u>	<u>(6-1-01)T</u>

502. WIC. The special supplemental Food Program for Women, Infants, and Children. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. APPLICATION FORMS.**

Households can file an application the first day they contact the Department. The Department will have Application for Assistance (AFA) (HW 0901) forms readily available to households. The household must turn in page one (1) of the AFA to file for Food Stamps. The Department will provide an AFA to any person making a request. Requests for the application can be made by telephone, in person or by another person. The Department will mail or give the AFA to the person on the day requested. (6-1-94)

01. Explanation Of Application Process. The Department will provide a written statement telling what the household must do to complete the application process. The statement will identify sources of the proof needed to complete the application process. (6-1-01)T

02. Households With Special Needs. The Department will tell households with special needs about help for obtaining proof. Households with special needs have members that are: (6-1-01)T

- a. Elderly or disabled. (6-1-01)T
- b. Homeless. (6-1-01)T
- c. Non-English speaking. (6-1-01)T
- d. Residing in a low-income area. (6-1-01)T
- e. Employed. (6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. WRONG FIELD OFFICE CONTACTED.**

If a household contacts the wrong Field Office, the Department will give the household the address and phone number of the correct Field Office. The Department will offer to forward the AFA to the correct Field Office, and tell the household the AFA is not filed and processing standards do not start until the AFA gets to the correct field office. The AFA must contain the applicant's name, address, signature and date of application. The AFA must be date stamped and mailed to the correct Field Office the same day, or delivered to the correct Field Office the next day. (7-1-97)(6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. HOUSEHOLD INTERVIEWS.**

Households must have a face-to-face interview before certification and recertification, unless the interview is waived. A new interview is not necessary if the household had a face-to-face interview at initial certification and at least once every twelve (12) months thereafter. A household member or an authorized representative can be interviewed. The applicant may bring any other person to the interview. The Department does not require households to report for an in-office interview during their certification period, but they may be requested to do so. (4-5-00)(6-1-01)T

**121. WAIVER OF OFFICE INTERVIEW.**

An office interview may be waived if one (1) or more conditions below in Subsections 121.01 through 121.05 are

~~met.~~ The reason for the waiver of the office interview must be documented in the case record. ~~(6-1-94)~~(6-1-01)T

**01. No Representative And Age Sixty.** All adult household members cannot come for an interview and they are sixty (60) or older. The household does not have another person to appoint as an authorized representative. (9-1-94)

**02. Mentally Or Physically Handicapped.** All adult household members are mentally or physically handicapped. The household does not have another person to appoint as an authorized representative. (9-1-94)

**03. Transportation Problems.** The adult household members have transportation problems. The household does not have another person to appoint as an authorized representative. (9-1-94)

**04. Lives Over Thirty Miles From Field Office.** The adult household members do not live within thirty (30) miles of a Field Office. The household does not have another person to appoint as an authorized representative. (9-1-94)

**05. Other Hardship.** The adult household members have hardships warranting a waiver of office interview. ~~Hardships must be documented in the case record.~~ Hardships include illness, care of a household member, prolonged severe weather and work or training hours preventing an in-office interview. The household does not have another person to appoint as an authorized representative. ~~(9-1-94)~~(6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**135. SOURCES OF VERIFICATION.**

The following sources of verification must be considered: (6-1-94)

**01. Written Confirmation.** The primary source of proof is written confirmation of circumstances. Written proof includes driver's licenses, work or school identification, birth certificates, wage stubs, award letters, court orders, divorce decrees, separation agreements, insurance policies, rent receipts and utility bills. Acceptable proof is not limited to a single document. Proof can be obtained from the household or other sources. Secondary sources of proof must be used to verify a household's circumstances if the primary source cannot be obtained or does not prove eligibility or benefit level. (7-1-97)

**02. Collateral Contacts.** A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. Acceptable collateral contacts include employers, landlords, migrant service agencies, friends, neighbors and relatives not living in the household. The collateral contact must accurately confirm the household's statement. The Department is responsible for getting proof from the collateral contact. The household usually names the collateral contact. The household may request help in selecting a collateral contact. (6-1-94)

**03. Automated System Records.** System records include BENDEX, SDX, DO~~E~~L and INS records. The Department has routine access to automated system records. ~~(6-1-94)~~(8-1-01)T

**04. Home Visits.** Home visits may be ~~conducted if primary proof cannot be obtained~~ used to get proof needed for Food Stamp eligibility only when the proof cannot be obtained otherwise. Home visits will be used on a case-by-case basis only when proof supplied by the household is not sufficient. Home visits must be scheduled in advance with the client. ~~(6-1-94)~~(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**138. PROVIDING PROOF TO SUPPORT APPLICATION STATEMENTS.**

The household has primary responsibility to provide proof supporting its statements on the application. The

household has primary responsibility to resolve any questionable information. The Department must assist the household in obtaining proof. Households may supply proof in person, through the mail, by facsimile or other electronic device, or through an authorized representative. The Department will not require the household to present proof in person. (6-1-01)T

~~1389~~ -- 141. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**177. FOOD STAMPS FOR TAFI OR AABD HOUSEHOLDS.**

The Department will tell TAFI or AABD applicants they can apply for Food Stamps when they apply for TAFI or AABD. Households, applying for TAFI or AABD and Food Stamps at the same time, must complete an application for TAFI or AABD and Food Stamps. Households may be eligible for an out-of-office interview. The Food Stamps must be issued by Food Stamp rules. The Department will tell Food Stamp households, applying for TAFI, that TAFI time limits and requirements do not apply to the Food Stamp program. Households no longer receiving TAFI may still be eligible for Food Stamps. (7-1-98)(6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**203. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.**

Before certification, households must provide the Department the SSN, or proof of application for SSN, for each household member. If a household member has more than one (1) SSN, he must provide all of his SSNs. (7-1-98)

**01. Religious Objection.** Households declaring a valid religious objection to getting or providing an SSN may get Food Stamps, if otherwise eligible. Document the valid reason for the SSN objection. Tell the household SSNs may be assigned to household members without their cooperation. Tell the household other sources may be used to get SSN data. (6-1-94)

**02. Apply For SSN.** If a household member does not have an SSN, he must apply for an SSN. After the member files the SSN application, he may get Food Stamps while the SSN is assigned. If a household member is unable to provide his SSN, he must apply for a duplicate SSN card. If a household member does not know if he has an SSN, he must apply for an SSN. If a household member has a questionable SSN he must apply for an SSN. SSN application process and proof is listed below: (7-1-97)

a. Application for SSN or duplicate SSN card. For the household member with a SS card, the Department must tell the household an SS-5 Application for SSN must be filed at an SSA office, give the household an HW 0446 Social Security Number Referral form, and tell the household proof of age, identity, and citizenship must be provided to the SSA. (6-1-94)(8-1-01)T

b. Proof of SSN application. The household must prove it applied for an SSN by giving one (1) of three (3) forms to the Department: A completed HW 0446 Social Security Number Referral, signed and dated by SSA, a completed SSA-5028 Evidence of Application for Account Number Card, signed and dated by SSA, a completed SSA-2853 Message From Social Security, signed and dated by a hospital representative. The acquired SSN card is proof of application. (6-1-94)

**03. Proof Of Application For An SSN For A Newborn.** A newborn may participate when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next recertification or six (6) months after the month the child was born, whichever is later. If the household does not provide proof, treat the child as a disqualified household member the month following the month the household failed to provide the proof. (7-1-98)

**04. Expedited Services SSN Requirements.** Households getting expedited services must furnish an

SSN or apply for an SSN for each person before the second full month of Food Stamp participation. If the application date is the first day of the month and proof is delayed, the household is assigned a normal certification period. For a household applying on the first day of the month, if the SSN or application for SSN is not provided for a household member during the first month, the person is treated as an excluded household member beginning the second month. A newborn may participate when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next recertification or six (6) months after the month the child was born, whichever is later. (7-1-98)

**05. Refusal Or Failure To Provide SSN.** Refusal or failure, without good cause, to provide an SSN will end benefits of the person without an SSN. Refusal or failure, without good cause, to apply for an SSN, will end benefits of the person without an SSN. The person is not eligible until an SSN is provided or application is made. The disqualified person's income and resources must be counted in the Food Stamp budget. Explain these penalties to the household. If benefits are reduced or ended, because one (1) or more persons fail to meet the SSN requirement, send a Notice of Decision. The notice includes the name of the disqualified household member, the reason and the new household benefit. The notice tells the household the actions they must take to get Food Stamps for the disqualified member. (6-1-94)

**06. Good Cause For Not Applying For SSN.** If a member can show good cause why an SSN application was not completed, within the application month, the member can participate for an additional month. Good Cause is described below: (6-1-94)

a. Good cause exists if the HW 0446 or other documents show the household submitted form SS-5 to the SSA, but the SS-5 was not processed in a timely manner by the SSA. Once the SS-5 has been filed and accepted by the SSA, the member can be eligible until the SS-5 is processed. (6-1-94)

b. Good cause exists if documents or collateral data show the household applied for, or made every effort to apply for, an SSN. (6-1-94)

c. Good cause does not include household-caused delays due to illness, lack of transportation, or temporary absences. (6-1-94)

**07. Person Unable To Get Proof For SSA.** If the person is unable to get the proof required by SSA for an SSN, the Department will help the person get proof. (6-1-94)

**08. Good Cause Extension.** If the person cannot get an SSN in the application month, and good cause exists, a one (1) month extension must be granted to allow the person to get Food Stamps until the SSN is received. (6-1-94)

**09. SSN Proof Required.** Verify all SSNs, or application for SSNs, for each household member. SSNs are proved through Numident. (6-1-94)

**10. SSN Not Proved Due To Numident Discrepancy.** If there is a Numident discrepancy take the action listed below: (6-1-94)

a. Notify household member. Notify the household member, in writing, they must submit a corrected SS-5 and supporting data to SSA within ten (10) calendar days. Notify the household member their Food Stamps will end if the Department does not have proof the SS-5 was submitted to SSA within ten (10) calendar days. ~~(6-1-94)~~(8-1-01)T

b. Evaluate good cause. Determine whether there is good cause for refusal to cooperate, if a household member claims # they cannot submit the SS-5 and supporting data to SSA. If the supporting data has been destroyed good cause may exist. ~~(6-1-94)~~(8-1-01)T

c. End benefits. Disqualify only the persons with a Numident discrepancy, who refuse to cooperate with the SSN requirement. Close the case after timely advance notice, if the entire household has a Numident discrepancy and refuses to cooperate with the SSN requirement. Refusal to cooperate means the household fails failure or refuses refusal to submit the SS-5 and required proof to SSA, without good cause. ~~(6-1-94)~~(8-1-01)T

**204. CITIZENSHIP OR SATISFACTORY IMMIGRATION STATUS.**

A person must be a U. S. resident to get Food Stamps. A person must be a U.S. citizen, a U.S. non-citizen national, or a qualified legal non-citizen to get Food Stamps. To be eligible for Food Stamps, legal non-citizens must meet a category in Subsections 204.01 through 204.1#0. (4-5-00)(8-1-01)T

**01. Permanent Residents ~~Admitted Before August 22, 1996~~.** A non-citizen lawfully admitted to the United States for permanent residence ~~before August 22, 1996~~ is eligible indefinitely if meeting a condition in Subsection 204.01.a. or 204.01.b.: (7-1-99)(6-1-01)T

a. ~~Who~~ The non-citizen is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty; ~~or.~~ (7-1-99)(6-1-01)T

b. ~~Who~~ The non-citizen has forty (40) quarters of work. A quarter worked by the legal non-citizen's parent, while the legal non-citizen was under age eighteen (18) and a quarter worked by the legal non-citizen's spouse during marriage if the legal non-citizen remains married to the spouse or the spouse is deceased can be counted as a quarter of work for the legal non-citizen. Any quarter after January 1, 1997, in which a legal non-citizen received any Federal means-tested benefit is not counted as a quarter of work. (7-1-99)(6-1-01)T

~~**02. Permanent Residents Admitted On Or After August 22, 1996.** A lawful permanent resident admitted on or after August 22, 1996.~~ (7-1-99)

~~a. Who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty; or~~ (7-1-99)

~~b. Who has lived in the United States for five (5) years and has forty (40) quarters of work.~~ (7-1-99)

**032. Lawful Non-Citizen, Permanent Residents Residing In The U.S. On August 22, 1996.** Lawful non-citizen, permanent residents residing in the U. S. on August 22, 1996 who are: (4-5-00)

a. Blind or disabled of any age under the disability criteria listed in Subsections 216.02 through 216.10; or (4-5-00)

b. Sixty-five (65) years of age or older, at that time; or (4-5-00)

c. A child who is now under the age of eighteen (18). (4-5-00)

**043. Refugees.** A refugee admitted under Section 207 of the Immigration and Nationality Act, a Cuban/Haitian entrant as defined in Section 501(e) of the Refugee Assistance Act of 1980 or an Amerasian admitted under Section 584 of Public Law 100-202 and amended by Public Law 100-461, is eligible: (7-1-99)

a. For seven (7) years from refugee's date of entry; or (4-5-00)

b. With no time limit if the refugee is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty. (7-1-99)

**054. Asylees.** An asylee admitted under Section 208 of the Immigration and Nationality Act is eligible: (7-1-99)

a. For seven (7) years from the date asylee status is assigned; or (4-5-00)

b. With no time limit if the asylee is a veteran honorably discharged for a reason other than alienage or on active duty for other than training in the U.S. Armed Forces, or the spouse or unmarried dependent of the veteran or person on active duty. (7-1-99)

**065. Deportation Withheld.** An individual whose deportation has been withheld under Section 241(b)(3) or 243(h) of the Immigration and Nationality Act is eligible: (7-1-99)

a. For seven (7) years from the date deportation was withheld; or (4-5-00)

b. With no time limit if the deportee is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (7-1-99)

**076. Conditional Entrants.** A conditional entrant admitted under Section 203(a)(7) of the Immigration and Nationality Act who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (7-1-99)

**087. Parolees.** A person paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act for a period of at least one (1) year who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (7-1-99)

**098. Battered Non-Citizen.** A legal non-citizen admitted to the United States as a battered non-citizen under Section 204(a)(1)(A), or 204(a)(1)(B) of the Immigration and Nationality Act, as a non-citizen whose deportation is suspended under Section 244(a)(3) of the INA who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (7-1-99)

**109. Certain Hmong and Highland Laotians.** Certain Hmong and Highland Laotians who were: (4-5-00)

a. Members of a Hmong or Highland Laotian tribe at the time the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975; or (4-5-00)

b. The spouse or unmarried dependent child of such an individual; or (4-5-00)

c. The unremarried surviving spouse of such an individual who is deceased. (4-5-00)

**110. Native Americans.** Native Americans with treaty rights to cross the U.S. borders, American Indians born in Canada to whom the provisions of Section 289 of the Immigration and Nationality Act apply, or members of an Indian tribe as defined in Section 4(e) of the Indian Self-Determination and Education Assistance Act. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**206. PROOF OF PROPER IMMIGRATION STATUS.**

Immigration status is proved by INS. INS will compare the evidence to their Alien Status Verification Index (ASVI) to verify the immigration status of the legal non-citizen. (7-1-98)

**01. Proof Of Immigration Status.** Legal non-citizens must present proof of immigration status for each legal non-citizen member. (7-1-99)

**02. Time Limits For Providing Legal Non-Citizen Documents.** Allow legal non-citizens ten (10) days to provide legal non-citizen status documents. The ten (10) day period starts the date legal non-citizen status documents are requested. If the ten (10) day period ends before the thirtieth day after application, do not certify the

household until it provides the documents. If the ten (10) day period ends beyond the thirtieth day after application, do not delay benefits for the remaining household members, if the household is otherwise eligible. Provide benefits no later than the thirtieth day. If the legal non-citizen status documents are not provided by the end of ten (10) days, the legal non-citizen member must be classified as an ineligible legal non-citizen. (7-1-98)

**03. Failure To Provide Legal Non-Citizen Documents.** If a household says it is unable or unwilling to provide legal non-citizen status documents for a legal non-citizen household member, the legal non-citizen member must be classified as an ineligible legal non-citizen. (7-1-98)

**04. Proof Of Immigration Status.** The documents provided by the household for members identified as legal non-citizens are submitted to INS for proof. The proof is completed by use of SAVE. Primary and secondary methods of proof are described below: (7-1-98)

a. Primary proof. Primary proof is telephone access to the INS files. This method uses the Alien Status Verification Index (ASVI). The Alien indicator (A) plus the seven (7) or eight (8) numbers shown on the original document is used to access the ASVI file. (6-1-94)

b. Secondary proof. Secondary proof is sending photo copies of the original immigration documents and a Document Verification Request Form (G-845) to INS for proof. Notify the participant before getting secondary proof. Secondary proof is used if any of the conditions in Subsections 206.04.b.i. through 206.04.b.v. apply: ~~(7-1-99)~~(8-1-01)T

i. Primary proof instructs the Department to "Institute Secondary Verification". (7-1-99)

ii. No record is found through the primary proof system. (7-1-99)

iii. The Department has accepted non-INS documents determined to be reasonable evidence of legal non-citizen immigration status. (7-1-99)

iv. The Department has determined documents presented by the legal non-citizen are questionable. (7-1-99)

v. An Alien (A) Number is not on an INS document. Information in the record is not consistent and more proof is needed. (7-1-99)

c. The Department must accept participation in another program as proof of citizenship or non-citizen national status, if verified for that program. (6-1-01)T

d. If the household cannot get proof of citizenship or non-citizen national status, and has a reasonable explanation why proof is not available, accept a signed statement, under penalty of perjury, from a third party. The statement must give a reasonable basis for personal knowledge that the member is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud. (6-1-01)T

**05. Secondary Proof Requirement.** If primary proof fails to verify legal non-citizen status, the secondary proof procedure must be completed before the Department denies Food Stamps based solely on legal non-citizen status. (7-1-99)

**06. Legal Non-Citizen Status Not Proved.** A legal non-citizen whose status is not proved by INS or a third party statement of U.S. citizenship or non-citizen national status, must be considered an ineligible legal non-citizen. ~~(7-1-98)~~(6-1-01)T

**07. Documentation Provided Late.** If the legal non-citizen later provides documentation of legal non-citizen status, and other household members get Food Stamps, act on the information by submitting it to INS for proof. Once the eligible legal non-citizen status is verified add the legal non-citizen. Add the legal non-citizen the month after the participant provides documentation of legal non-citizen status to the Department, not the month after INS verifies the status. If the Food Stamp case is not open, the legal non-citizen must re-apply. (7-1-99)

**207. INELIGIBLE ~~LEGAL~~ NON-CITIZEN STATUS.**

If legal non-citizen status cannot be proved or ineligible ~~legal~~ non-citizen status is proved, the ~~legal~~ non-citizen is not eligible for Food Stamps. ~~His income and resources must be counted.~~ Ineligible ~~legal~~ non-citizens include, but are not limited to, ~~legal~~ non-citizens entering the country illegally to seek employment, ~~legal~~ non-citizen visitors, tourists, diplomats, and persons temporarily attending school in the United States with no intention of abandoning their foreign residence. A non-citizen is ineligible, until he provides acceptable proof, unless meeting a condition in Subsections 207.01 through 207.03. ~~(7-1-98)~~(6-1-01)T

**01. Status Submitted To INS For Verification.** If the Department submits a copy of a document, provided by the household, to INS for verification, the Department cannot delay, deny, reduce, or end the person's eligibility for Food Stamps based on immigration status. (6-1-01)T

**02. Request Submitted To SSA For Number Of Quarters Of Work Credited.** The applicant or Department submitted a request to SSA for data on the number of quarters of work credited to the person. SSA responds that the person has fewer than forty (40) quarters. The person provides proof that SSA is conducting research to see if it can credit more quarters. If SSA says the number of credited qualifying quarters is under investigation, the Department must certify the person pending the results. The certification can last up to six (6) months from the date of the original determination of insufficient quarters. (6-1-01)T

**03. Request Submitted To Federal Agency For Proof Of Eligible Alien Status.** The applicant or the Department submits a request to a Federal agency for proof of eligible alien status. The Department must certify the person pending the results of the investigation. The certification can last up to six (6) months from the date of the original request for proof. (6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

~~251. -- 253. (RESERVED).~~

**254. ABAWD WORK REQUIREMENT.**

To participate in the Food Stamp program, persons must meet one (1) of the conditions in Subsections 254~~1~~.01 through 254~~1~~.03~~4~~. Persons not meeting one (1) of these conditions ~~in Section 254~~ may not participate in the Food Stamp program as a member of any household for more than three (3) full months (consecutive or otherwise) in the thirty-six (36) month period beginning December 1, 1999 and ending November 30, 2002. ~~(4-5-00)~~(8-1-01)T

**01. Work ~~For Twenty Hours Or More Per Week~~ At Least Eighty Hours Per Month.** The person must work ~~for twenty (20) hours or more per week, averaged at least eighty (80) hours per month.~~ ~~The person must be paid money for the work.~~ The definition of work under this section is any combination of: ~~(7-1-99)~~(8-1-01)T

- a. Work in exchange for money. (8-1-01)T
- b. Work in exchange for goods or services, known as "in-kind" work. (8-1-01)T
- c. Unpaid work, with a public or private non-profit agency. (8-1-01)T

**02. Participate In JSAP Or Another Work Program.** The person must participate in and comply with the requirements of the JSAP program (other than job search or job readiness activities), the ~~JPPA~~ WIA program, a program under Section 236 of the Trade Act of 1974, or another work program recognized by the Department. The person must participate for ~~twenty (20) hours or more per week~~ at least eighty (80) hours per month. ~~(7-1-99)~~(6-1-01)T

**03. Combination Of Work And Work Programs.** The person must work and participate in a work program. Participation in work and work programs must total at least eighty (80) hours per month. (8-1-01)T

**034. Participate In Work Opportunities.** The person must participate in and comply with the

requirements of a Work Opportunities program. (7-1-99)

**252. PROOF REQUIRED FOR ABAWDs.**

The Department requires proof of compliance with the ABAWD requirements. (8-1-01)T

**01. Proof Of Hours Worked.** Each month the ABAWD must supply proof of work hours, participation in work programs, or participation in work opportunities. (8-1-01)T

**02. Food Stamp Months In Another State.** If there is evidence the ABAWD got Food Stamps in another state, get proof of the number of countable months from that state, before certification. A written or verbal statement from the other state agency of countable months is acceptable proof. (8-1-01)T

**253. ABAWD GOOD CAUSE.**

The work requirement is met if an ABAWD would have worked at least eighty (80) hours per month, but missed work for good cause. The absence from work must be temporary. The ABAWD must keep the job. Circumstances beyond control of the ABAWD are the basis of good cause. These include illness, illness of a household member requiring the presence of the ABAWD, household emergency, and lack of transportation. (8-1-01)T

**OLD SECTION 254 HAS BEEN RENUMBERED TO SECTION 251.**

**254. REPORTING ABAWD CHANGES.**

ABAWDs must report within ten (10) days of the date of change, if total work or work program hours drop below eighty (80) hours per month. (8-1-01)T

**255. REGAINING ELIGIBILITY.**

Persons ABAWDs whose three (3) month eligibility ~~has~~ expireds may regain eligibility for Food Stamps. During any calendar month thirty (30) consecutive days, the person must meet one (1) of the work requirements in Subsections 255.01 through 255.032. Prorate Food Stamp benefits Aafter the person regains eligibility, ~~they~~ ABAWDs must continue to meeting the work requirement to get Food Stamps, or meet conditions for the three (3) additional months. There is no limit on the number of times an ABAWD may regain and maintain eligibility by meeting the work requirement. ~~(4-5-00)~~(8-1-01)T

**01. Work Eighty Hours.** The person must work eighty (80) or more hours per month. ~~(7-1-99)~~(8-1-01)T

**02. Participate In JSAP.** The person must participate in and comply with the requirements of the JSAP program (other than job search or job search training), the ~~JTPA~~ WIA program or a program under section 236 of the Trade Act of 1974 for eighty (80) or more hours per month. ~~(7-1-99)~~(8-1-01)T

**03. ~~Three Additional Months Food Stamps After Regaining Eligibility.~~**

**256. THREE ADDITIONAL MONTHS OF FOOD STAMPS AFTER REGAINING ELIGIBILITY.**

A person who met the work requirement but lost a job through no fault of their own may get Food Stamps for three (3) consecutive months. For applicants, the three (3) consecutive months begins the first full month of benefits. For participants, the three (3) consecutive months begins the month following the month the person no longer meets the work requirement. A person is eligible for the additional three (3) consecutive months only once in a thirty-six (36) month period. ~~(7-1-99)~~(8-1-01)T

~~257. -- 258. (RESERVED).~~

**2567. EXEMPTIONS FROM THE ABAWD WORK REQUIREMENT.**

Persons meeting a condition in Subsections ~~2567.01~~ through ~~2567.056~~ are exempt from the ABAWD work requirement. ~~(7-1-98)~~(8-1-01)T

**01. Age.** Persons under eighteen (18) and ~~over~~ fifty (50) years of age or older. ~~(7-1-98)~~(8-1-01)T

**02. Disability.** Persons medically certified as physically or mentally unfit for employment. Proof of the disability is required. A person is medically certified as physically or mentally unfit for employment if:

~~(7-1-98)~~(8-1-01)T

a. Receiving temporary or permanent disability benefits issued by a government or private source.  
(8-1-01)T

b. Obviously mentally or physically unfit for employment, as determined by the Department.  
(8-1-01)T

c. The person has a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, licensed or certified psychologist, a social worker, or any other medical personnel the Department determines appropriate, verifying physical or mental unfitness for employment.

(8-1-01)T

**03. ~~Parental Responsibility Residing In A Household Where A Member Is Under Age Eighteen.~~**  
~~Parents or step parents with children All persons residing in a household where a household member is under eighteen (18) years old in the household. In the absence of a parent in the household, one (1) adult household member exercising parental control over children under eighteen (18) years old in the household.~~

~~(7-1-98)~~(8-1-01)T

**04. Pregnancy.** Pregnant persons. (7-1-98)

**05. JSAP Exempt.** Persons exempt from JSAP are also exempt from the ABAWD work requirement.  
(7-1-99)

**06. FNS ABAWD Waiver.** Persons residing in an area where FNS granted a time limit waiver because of high unemployment or lack of jobs.  
(8-1-01)T

**258. FOOD STAMPS ISSUED TO INELIGIBLE ABAWD.**

If an ineligible ABAWD gets a Food Stamp issuance, the issuance is an overissuance until the ABAWD pays it back in full. The overpaid months count against the ABAWD time limit until repaid.

(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. PENALTY FOR APPLICANT QUITTING A JOB OR REDUCING WORK HOURS.**

If the Department determines a voluntary quit or reduction of work hours was not for good cause, the member who quit is not eligible for a ninety (90) day penalty period. The penalty period begins the date the household member quit. The applicant household must be told the job quit and work reduction penalty information listed below:

(4-5-00)

**01. Denial Reason.** The household must be informed of the reason for the Food Stamp denial for the member.  
(4-5-00)

**02. Sanction Period.** The household must be informed of the proposed voluntary quit or work reduction sanction period.  
(7-1-98)

**03. Fair Hearing.** The household must be informed of the right to a fair hearing.  
(6-1-94)

**04. Right To Reapply.** The household must be informed of the right to reapply after the ninety (90) day penalty period.  
(8-1-01)T

**271. PENALTY FOR RECIPIENT QUITTING A JOB OR REDUCING WORK HOURS.**

If the Department determines a member of the household voluntarily quit a job or reduced work hours, the penalty

listed in Subsection 271.01 must be imposed. ~~The benefits Food Stamps~~ must end, beginning the first month after timely notice. The household must be told the information listed in Subsections 271.02 through 271.06 within ten (10) calendar days of the voluntary quit or reduction in work ruling. When determining the penalty to impose, previous sanctions for noncompliance with JSAP and work registration requirements must be considered. Previous penalties for applicant voluntary quit or work reduction must also be considered. (4-5-00)(8-1-01)T

**01. Sanction Period.** The member who quit or reduced work hours is excluded as a household member. ~~The person cannot get Food Stamps, but his income and resources are counted in the Food Stamp computation for the household.~~ The person is not eligible for the greater of the penalty periods listed below or until he meets one (1) of the conditions to end the penalty. (4-5-00)(8-1-01)T

a. First quit or reduction. The ~~greater of the date~~ later in time the person ~~cures the sanction~~ returns to work or increases work hours or one (1) month. (7-1-98)(8-1-01)T

b. Second quit or reduction. The ~~greater of the date~~ later in time the person ~~cures the sanction~~ returns to work or increases work hours or three (3) months. (7-1-98)(8-1-01)T

c. Third quit or reduction and subsequent quit or reduction. The ~~greater of the date~~ later in time the person ~~cures the sanction~~ returns to work or increases work hours or six (6) months. (7-1-98)(8-1-01)T

**02. Closure Reason.** The household must be informed of the reason for the closure. (6-1-94)

**03. Sanction Notice.** The household must be informed of the proposed sanction period. (4-5-00)

**04. Sanction Start.** The household must be informed the sanction will begin the first month after timely notice. (6-1-94)

**05. Actions To End Sanction.** The household must be informed of the actions the household can take to end the sanction. (6-1-94)

**06. Fair Hearing.** The household must be informed of the right to a fair hearing. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**279. FAILURE TO COOPERATE.**

**01. Failure to Cooperate.** Determine if the parent or individual has cooperated in establishing paternity and obtaining support. Failure to cooperate includes, but is not limited to, failure to complete the absent or alleged parent information or filiation affidavit as requested, failure to sign the limited power of attorney, or evidence of failure to cooperate provided by CSS. (7-1-98)

**02. Penalty For Failure To Cooperate.** When a parent or individual fails to cooperate in establishing paternity and obtaining support, she is not eligible to participate in the Food Stamp Program. ~~Count the disqualified parent or individual's income and resources in full.~~ (7-1-98)(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**284. DETERMINING STUDENT ELIGIBILITY.**

To be eligible for Food Stamps, a student must meet at least one (1) of the criteria listed below: (6-1-94)

**01. Employment.** The student is employed a minimum of twenty (20) hours per week and is paid for such employment. The student is self-employed a minimum of twenty (20) hours per week. The student must earn at

least the Federal minimum wage times twenty (20) hours. (6-1-94)

**02. Work Study Program.** The student is in a State or Federally financed work study program during the regular school year. The student exemption begins the month the school term begins, or the month the work study is approved, whichever is later. The exemption continues until the end of the month the school term ends, or it becomes known the student has refused an assignment. The student work study exemption stops when there are breaks of a full calendar month or longer between terms, without approved work study. The exemption only applies to months the student is approved for work study. (7-1-97)

**03. Caring For Dependent Child.** The student is responsible for the care of a dependent household member under age six (6). There must not be another adult in the household available to care for the child. Availability of adequate child care is not a factor. The student is responsible for the care of a dependent household member at least age six (6) but under age twelve (12). The Department must determine adequate child care is not available to enable the student to attend class and satisfy the twenty (20) hour work requirement. The student must be a single parent responsible for the care of a dependent child under the age of twelve (12). The student is enrolled full-time in an institution of higher education. Full-time enrollment is determined by the institution. Availability of adequate child care is not a factor. (6-1-94)

**04. TAFI Participant.** The student gets cash benefits from the TAFI program. (7-1-98)

**05. Training.** The student is assigned to or placed in an institution of higher education through or complying with: The ~~JFPA~~ WIA program. The JOBS program. The JSAP program. A program under Section 236 of the Trade Act of 1974. A program for employment and training operated by a State or local government. ~~(7-1-97)~~(6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**335. TOTALLY EXCLUDED LICENSED VEHICLES.**

The Department determines if a vehicle is totally excluded as a resource. If a vehicle is totally excluded, the resource value is not counted against the household's resource limit. Totally excluded licensed vehicles are listed ~~below:~~ in Subsections 335.01 through 335.07. ~~(6-1-94)~~(8-1-01)T

**01. Licensed Vehicle Used To Produce Income.** ~~Used over fifty percent (50%) of the time to produce income. The exclusion applies during temporary unemployment. Examples: Taxi, produce truck, or fishing boat. If used to produce income fifty percent (50%) of the time or less, the vehicle must produce annual income consistent with the vehicle's fair market value (FMV). Annual income of ten percent (10%) of FMV is consistent with the vehicle's FMV. Annual income of less than ten percent (10%) of the FMV must be consistent with market trends. The exclusion applies during temporary unemployment. Examples: Taxi, produce truck, or fishing boat.~~ Licensed vehicles used in self-employed farming by a household member will continue to be excluded as a resource for one (1) year after the farming self-employment stops. ~~(6-1-94)~~(8-1-01)T

**02. Licensed Vehicle Used For Job-Related Long Distance Travel.** Used for job-related long distance travel by household member, ineligible legal non-citizen, or disqualified person. This does not include commuting to work or training. The exclusion applies during temporary unemployment. (7-1-98)

**03. Licensed Vehicle Used As Client's Home.** The vehicle is used as the household's home. (6-1-94)

**04. Licensed Vehicle Used To Transport A Disabled Household Member-Of Household.** Needed to transport any physically disabled ~~person~~ household member, physically disabled disqualified person whose resources are counted as available to the household, or physically disabled ineligible alien living in the household. The vehicle is excluded regardless of the purpose of the transportation. This exclusion is limited to one (1) vehicle per physically disabled person. The physical disability may be permanent or temporary. The disability must be verified. ~~(6-1-94)~~(8-1-01)T

**05. Licensed Vehicle Used To Travel From Job To Job.** Used by migrant farm worker to go from job to job. (6-1-94)

**06. Vehicle Used To Carry Fuel Or Water.** Used to carry the primary source of fuel for heating or water for home use during the certification period. (7-1-98)

**07. Licensed Vehicles With No Significant Return.** Proceeds from the sale of the vehicle, minus loans, would be less than one thousand five hundred dollars (\$1,500). (8-1-01)T

**336. VEHICLES COUNTED AS A RESOURCE.**

Determine first if a vehicle is excluded, under Section 335 of these rules, from the equity value test for resources. If the vehicle is not excluded under Section 335, determine the resource value using Subsections 336.01 and 336.02. ~~Determine if a vehicle is~~ The resource value for licensed or vehicles is determined differently than for unlicensed vehicles. (6-1-94)(8-1-01)T

**01. Resource Value Of Licensed Vehicles.** Count the resource value of licensed vehicles, if not excluded under Section 335 of these rules, as shown below: (6-1-94)(8-1-01)T

a. Licensed vehicle ~~used for general per adult household use member.~~ Allow one (1) licensed vehicle per adult household member, or ineligible alien, or disqualified household member, whose resources are counted as available to the household, regardless of use. Count the vehicle's fair market value over four thousand six hundred fifty dollars (\$4,650) counted as a resource, regardless of debt. (7-1-97)(8-1-01)T

b. Licensed vehicle ~~per household member under age eighteen (18), used to commute to work, education, or training, or to seek work. Allow one (1) licensed vehicle per household member, or ineligible alien, or disqualified household member under age eighteen (18), whose resources are counted as available to the household. The vehicle must be used to commute to work, training for work, or to seek work. This is in addition to general use vehicle. This includes use by household member, ineligible legal non-citizen, or disqualified person. Count the vehicle's fair market value over four thousand six hundred fifty dollars (\$4,650) counted as a resource, regardless of debt.~~ (7-1-98)(8-1-01)T

e. ~~Licensed vehicle used for job search. Vehicle used to seek work or comply with job search requirements. This is in addition to the general use vehicle. Vehicle's fair market value over four thousand six hundred fifty dollars (\$4,650) counted as a resource, regardless of debt.~~ (7-1-97)

d. Other licensed vehicles. All other licensed vehicles. Count the greater of the client's equity, which is the fair market value minus loans, or the vehicle's fair market value over four thousand six hundred fifty dollars (\$4,650) counted as a resource. (7-1-97)(8-1-01)T

**02. Resource Value Of Unlicensed Vehicles.** Count the resource value of unlicensed vehicles, is counted not excluded under Section 335 of these rules, as shown below in Subsections 336.02.a. through 336.02.c.: (6-1-94)(8-1-01)T

a. Unlicensed vehicles with no significant return. If the proceeds from the sale of the unlicensed vehicle, minus loans, would be less than one thousand five hundred dollars (\$1,500) do not count any resource value. (8-1-01)T

b. All other unlicensed vehicles. For all other unlicensed vehicles, working or not working, count the client's equity is counted as a resource. (6-1-94)(8-1-01)T

b. Unlicensed vehicles on Indian reservation. Treat unlicensed vehicles, driven by tribal members on Indian reservations not requiring licensure. Treated as licensed vehicles. Determine the vehicles' resource value is determined by their use. (6-1-94)(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**382. RESOURCES EXCLUDED BY FEDERAL LAW.**

Resources listed *below* in Section 382 are excluded by Federal law:

~~(6-1-94)~~(6-1-01)T

- 01. P.L. 91-646.** Reimbursements under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. (6-1-94)
- 02. P.L. 92-203.** The Alaska Native Claims Settlement Act. (6-1-94)
- 03. P.L. 93-134 As Amended By P.L. 103-66.** Effective January 1, 1994, interest of individual Indians in trust or restricted lands. (6-1-94)
- 04. P.L. 93-288 As Amended By P.L. 100-707.** Payments from Disaster Relief and Emergency Assistance. (6-1-94)
- 05. P.L. 93-531.** Relocation assistance to Navajo and Hopi tribal members. (6-1-94)
- 06. P.L. 94-114.** The submarginal lands held in trust by the U.S. for certain Indian tribal members. (6-1-94)
- 07. P.L. 94-189.** The Sac and Fox Indian Claims Agreement. (6-1-94)
- 08. P.L. 94-540.** Funds to the Grand River Band of Ottawa Indians. (6-1-94)
- 09. P.L. 95-433.** The Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission. (6-1-94)
- 10. P.L. 96-420.** The Passamaquoddy Tribe and Penobscot Nation funds paid under the Maine Indian Claims Settlement Act of 1980. (6-1-94)
- 11. P.L. 97-403.** Payments to the Turtle Mountain Band of Chippewas, Arizona. (6-1-94)
- 12. P.L. 97-408.** Payments to the Blackfeet, Gros Ventre and Asiniboine Tribes, Montana and the Papago Tribe, Arizona. (6-1-94)
- 13. P.L. 98-64 And P.L. 97-365.** Up to two thousand dollars (\$2,000) of any per capita payment, and any purchases made with such payment, from funds held in trust by the Secretary of the Interior. (6-1-94)
- 14. P.L. 98-123.** Funds awarded to members of the Red Lake Band of Chippewa Indians. (6-1-94)
- 15. P.L. 98-500.** Funds provided to heirs of deceased Indians under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of two thousand dollars (\$2,000). (6-1-94)
- 16. P.L. 99-264.** Payments to the White Earth Band of Chippewa Indian Tribe, Michigan. (6-1-94)
- 17. P.L. 99-346.** Payments to the Saginaw Chippewa Indian Tribe, Michigan. (6-1-94)
- 18. P.L. 99-498 And P.L. 102-523 Student Loans.** Financial assistance funded in whole or in part under Title IV of the Higher Education Act. (6-1-94)
- 19. P.L. 101-41.** Payments to the Puyallup Tribe of Indians, Washington. (6-1-94)
- 20. P.L. 101-277.** Payments to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida and the Independent Seminole Indians of Florida. (6-1-94)

21. **P.L. 101-426.** Payments from the Radiation Exposure Compensation Act. (6-1-94)
22. **P.L. 102-237.** Resources of any mixed household member who gets TAFI or SSI. (7-1-98)
23. **P.L. 103-286.** Effective 8-1-94, payments made to victims of Nazi persecution. (1-1-95)
24. **P.L. 103-436.** Payments to the Confederated Tribes of the Colville Reservation for the Grand Coulee Dam Settlement. (7-1-97)
25. **P.L. 104-204.** Payments to children with spina bifida born to Vietnam veterans. (7-1-99)
26. **Civil Liberties Act Of 1988.** Restitution payments to persons of Japanese ancestry who were evacuated, relocated and interned during World War II as a result of government action. These payments are also excluded when paid to the statutory heirs of deceased internees. (6-1-94)
27. **SSI Payments Under Zebley v. Sullivan Ruling.** Retroactive lump sum SSI payments, for childhood disability, paid as a result of the Zebley v. Sullivan ruling. The payments are excluded resources for six (6) months from receipt. (6-1-94)
28. **BIA Education Grant.** Bureau of Indian Affairs (BIA) Higher Education Grant Program. (6-1-94)
29. **WIC.** Benefits from the Women, Infants, and Children (WIC) Program. (6-1-94)
30. **~~JTPA~~ WIA.** Payments from the ~~Job Training Partnership~~ Workforce Investment Act (~~JTPA~~ WIA). ~~(6-1-94)~~(6-1-01)T
31. **Energy Assistance.** Payments from Federal, state, or local energy assistance, including insulation and weatherization payments. (6-1-94)
32. **HUD Payments.** HUD retroactive subsidy payments for tax and utilities are excluded the month received and the next month. (6-1-94)
33. **Agent Orange Settlement Fund.** Product liability payments, made by Aetna Life and Casualty from the Agent Orange Settlement Fund. Effective January 1, 1989. (6-1-94)
34. **Federal EITC.** Federal Earned Income Tax Credit (EITC) is excluded for the month of receipt and the following month. Federal EITC is excluded for twelve (12) months from receipt if the household member receives EITC while participating in the Food Stamp program. The exclusion continues only while the household participates in the Food Stamp program without a break, for up to twelve (12) months. The month of receipt is the first month of the exclusion. (1-1-95)
35. **Crime Act Of 1984 As Amended By P.L. 103-322.** Payments from a crime victim compensation program. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. EARNED INCOME.**

Earned income includes, but is not limited to, income listed *below* in Section 401.

~~(6-1-94)~~(6-1-01)T

**01. Wages Or Salary.** Wages and salaries of an employee, advances, tips, commissions, meals, and military pay are earned income. Garnishments from wages are earned income. (6-1-94)

**02. Self-Employment Income.** Income from self-employment, including capital gains, is earned income. Rental property is a self-employment enterprise. The income is earned if a household member manages the

property an average of twenty (20) or more hours per week. Payment from a roomer or boarder is self-employment income. (6-1-94)

**03. Training Allowances.** Training allowances from programs such as Work Study, and Vocational Rehabilitation are earned income. (7-1-99)

**04. Payments Under Title I.** Payments under Title I, such as VISTA and University Year for Action under P.L. 93-113 are earned income. (6-1-94)

**05. On-The-Job Training Programs.** ~~JTPA~~ WIA income includes monies paid by ~~JTPA~~ WIA or the employer. Income from ~~JTPA~~ WIA on-the-job training programs is earned income, unless paid to a household member under age nineteen (19). The household member under age nineteen (19) must be under the control of another household member. ~~(6-1-94)~~(6-1-01)T

**06. Basic Allowance For Housing (BAH).** BAH is an Armed Services housing allowance. BAH is counted as earned income. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**406. INCOME EXCLUDED BY FEDERAL LAW.**

Income listed ~~below~~ in Section 406 is excluded by Federal law when computing Food Stamp eligibility:

~~(6-1-94)~~(6-1-01)T

**01. P.L. 91-646.** Reimbursements under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. (6-1-94)

**02. P.L. 92-203.** Funds from the Alaska Native Claims Settlement Act. (6-1-94)

**03. P.L. 93-113 RSVP.** Payments under Title I and Title II, "Retired Senior Volunteer Program" (RSVP), the Foster Grandparents Program and the Domestic Volunteer Services Act of 1973. (6-1-94)

**04. P.L. 93-134 As Amended By P.L. 103-66.** Effective January 1, 1994, up to two thousand dollars (\$2,000) per calendar year of payments derived from interest of individual Indians in trust or restricted lands. (6-1-94)

**05. P.L. 93-288, P.L. 100-707 Disaster Relief.** Payments from Disaster Relief and Emergency Assistance Disaster Relief Act. (6-1-94)

**06. P.L. 93-531.** Relocation assistance to Navajo and Hopi tribal members. (6-1-94)

**07. P.L. 94-114.** The submarginal lands held in trust by the U.S. for certain Indian tribal members. (6-1-94)

**08. P.L. 94-189.** Funds from the Sac and Fox Indian Claims Agreement. (6-1-94)

**09. P.L. 94-540.** Funds to the Grand River Band of Ottawa Indians. (6-1-94)

**10. P.L. 95-433.** Funds to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission. (6-1-94)

**11. P.L. 96-420.** Funds to the Passamaquoddy Tribe and Penobscot Nation funds paid under the Maine Indian Claims Settlement Act of 1980. (6-1-94)

**12. P.L. ~~97-300~~ JTPA 105-220 WIA.** All earned and unearned income received from the ~~Job Training~~

*Partnership Workforce Investment Act (JTPA WIA)* of 1982~~98~~, except for earned income received from taking part in on-the-job training programs. ~~(6-1-94)~~(6-1-01)T

13. **P.L. 97-365 And P.L. 98-64.** Up to two thousand dollars (\$2,000) of any per capita payment, and any purchases made with such payment, from funds held in trust by the Secretary of the Interior. (6-1-94)
14. **P.L. 97-403.** Funds to the Turtle Mountain Band of Chippewas, Arizona. (6-1-94)
15. **P.L. 97-408.** Funds to the Blackfeet, Gros Ventre, and Assiniboine Tribes, Montana. Funds to the Papago Tribe, Arizona. (6-1-94)
16. **P.L. 98-123.** Funds to the Red Lake Band of Chippewa Indians. (6-1-94)
17. **P.L. 98-500.** Funds from the Old Age Assistance Claims Settlement Act, provided to heirs of deceased Indians, except for per capita shares over two thousand dollars (\$2,000). (6-1-94)
18. **P.L. 99-264.** Funds to the White Earth Band of Chippewa Indians, Minnesota. (6-1-94)
19. **P.L. 99-346.** Funds to the Saginaw Chippewa Indian Tribe, Michigan. (6-1-94)
20. **P.L. 100-175.** Effective October 1, 1987, payments received by persons age fifty-five (55) and older under Title V, "Senior Community Service Employment Program". (6-1-94)
21. **P.L. 100-435 WIC.** Benefits from the Women, Infants, and Children (WIC) Program. (6-1-94)
22. **P.L. 100-435.** Payments or reimbursements for work related or child care expenses made under an employment, education, or training program under Title IV-A of the Social Security Act after September 19, 1988. (6-1-94)
23. **P.L. 100-435.** Payments made to a JSAP participant for work, training, or education-related expenses or for dependent care. (6-1-94)
24. **P.L. 101-41.** Funds to the Puyallup Tribe of Indians, Washington. (6-1-94)
25. **P.L. 101-277.** Payments to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida, and the Independent Seminole Indians of Florida. (6-1-94)
26. **P.L. 101-426.** Payments made under the Radiation Exposure Compensation Act. (6-1-94)
27. **P.L. 101-508.** At-risk child care payments. (6-1-94)
28. **P.L. 101-610 And P.L. 103-82.** Allowances, earnings and payments to persons participating in programs under the National and Community Services Act. The exclusion applies to all payments made under the AmeriCorps Program. (7-1-99)
29. **P.L. 102-237.** Amounts needed for attainment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act. (6-1-94)
30. **P.L. 102-325.** Educational income authorized under the BIA student assistance programs and under Title IV of the Higher Education Amendments of 1992. (6-1-94)
31. **P.L. 103-286.** Effective 08-01-94, payments made to victims of Nazi persecution. (1-1-95)
32. **P.L. 103-436.** Payments to the Confederated Tribes of the Colville Reservation for the Grand Coulee Dam Settlement. (7-1-97)
33. **P.L. 104-204.** Payments to children with spina bifida born to Vietnam veterans. (7-1-99)

- 34. Agent Orange Settlement Fund.** Product liability payments, made by Aetna Life and Casualty from the Agent Orange Settlement Fund. Any other fund for the settlement of Agent Orange liability litigation. (6-1-94)
- 35. Civil Liberties Act Of 1988.** Restitution payments to persons of Japanese ancestry who were evacuated, relocated and interned during World War II as a result of government action. These payments are also excluded when paid to the statutory heirs of deceased internees. (6-1-94)
- 36. Negative Utility Allowance.** Negative utility payments from HUD and FmHA. (8-1-94)
- 37. Energy Assistance.** Payments from Federal energy assistance, including insulation and weatherization payments. (7-1-98)
- 38. SSI Payments Under Zebley v. Sullivan Ruling.** Retroactive lump sum SSI payments, for childhood disability, paid as a result of the Zebley v. Sullivan ruling. The payments are excluded resources for six (6) months from receipt. (6-1-94)
- 39. VISTA Payments.** Payments under Title I, VISTA, University Year for Action and Urban Crime Prevention Program to volunteers who were receiving Food Stamps or public assistance when they joined the program. Payments to volunteers who were getting an income exclusion for a VISTA or other Title I allowance before the Food Stamp Act of 1977. Temporary breaks in participation do not alter the exclusion. (6-1-94)
- 40. Crime Act Of 1984 As Amended By P.L. 103-322.** Payments from a crime victim compensation program. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**430. COMPUTING SELF-EMPLOYMENT INCOME.**

Procedures and rules for computing self-employment income are listed in Subsections 430.01 through 430.04. Self-employment income of households owning and operating a commercial boarding house is computed using Subsections 430.01 through 430.04. Add the net self-employment income to any other earned income received by the household. (6-1-94)

**01. Step 1 - Add Self-Employment Income.** For the self-employment income period, add all gross self-employment income. (6-1-94)

**02. Step 2 - Add Self-Employment Capital Gains.** Capital gains are the increase in value of an asset between the time it is bought and the time it is sold. Capital gains include profit from the sale or transfer of capital assets used in self-employment. *The net proceeds of sales of capital assets used in self-employment are income. The Department must Calculate capital gains using the Federal income tax method.* Count the full amount of the capital gains as income for Food Stamps. ~~(6-1-94)~~(8-1-01)T

**03. Step 3 - Subtract Costs.** Subtract the cost of producing the self-employment income. The household must have proof of costs. Allowable costs of producing self-employment income include, but are not limited to: (6-1-94)

- a. The cost of labor paid to nonhousehold members. (6-1-94)
- b. The cost of stock. (6-1-94)
- c. The cost of raw material. ~~(6-1-94)~~(8-1-01)T
- d. The cost for rent and utilities, advertising, shipping and legal fees. (6-1-94)

- e. The cost of seed and fertilizer. (6-1-94)
  - f. Interest paid to purchase income-producing property, including real estate. (6-1-94)
  - g. Insurance premiums. (6-1-94)
  - h. Taxes paid on income-producing property. (6-1-94)
  - i. Transportation, when a vehicle is an integral part of business activity. (6-1-94)
  - ~~j. Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods. (8-1-01)T~~
- 04. Costs of Doing Business.** The following items are not allowed as costs of doing business: (6-1-94)
- ~~a. Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods. (6-1-94)~~
  - ~~b~~a. Net losses from previous periods. (6-1-94)
  - ~~e~~b. Federal, State, and local income taxes. (6-1-94)
  - ~~d~~c. Money set aside for retirement. (6-1-94)
  - ~~e~~d. Work-related personal expenses such as transportation to and from work. (6-1-94)
  - ~~f~~e. Depreciation. (6-1-94)
  - ~~f~~. Any costs exceeding the payment a household gets from a boarder for lodging and meals. (8-1-01)T
- 05. Step 4 - Average Income.** Divide the self-employment income by the number of months the income will be averaged. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**534. AVERAGING PERIODIC DEDUCTIONS.**

Infrequent, changing, or one time only deductions for medical, child support, shelter or child care are averaged. Averaging deductible expenses and procedures are listed below: (7-1-97)

**01. Averaging Infrequent Expenses.** Households can have infrequent expenses averaged forward over the interval between scheduled billings. If there is no scheduled interval, expenses are averaged over the intended coverage period. (6-1-94)

**02. Averaging Fluctuating Expenses.** Households can have fluctuating expenses averaged over the certification period in which they are billed. (6-1-94)

**03. Averaging One Time Only Expenses.** One time only expenses can be averaged over the certification period in which they are billed. One time only expenses can be used as a one time deduction for one month. One time only expenses can be averaged over the remaining months in the certification period. Expenses averaged over the remaining certification period begin the month the change will become effective. (6-1-94)

**04. Predicting Future Expenses.** Predicted expenses must be based on the most recent month's bills,

unless changes are expected to occur. (6-1-94)

**05. Converting Expenses To Monthly Figures.** Whenever an expense is billed on other than a monthly basis convert the expense to a monthly amount. (6-1-94)

- a. Multiply weekly amounts by four point three (4.3). (6-1-94)
- b. Multiply bi-weekly amounts by two point one five (2.15). (6-1-94)
- c. Multiply semi-monthly amounts by two (2). (6-1-94)
- d. Use a monthly figure if it can be predicted for each month of the certification period. (6-1-94)
- e. The method used to compute monthly expenses must be documented. (6-1-94)

**06. Averaging One-Time Medical Expenses For Households Certified For Twenty-Four Months.** Households with one-time medical expenses, and certified for twenty-four (24) months, have the option of: (8-1-01)T

- a. Deducting the expense for one (1) month. (8-1-01)T
- b. Averaging the expense over the remainder of the first twelve (12) months of the certification period. (8-1-01)T
- c. Averaging the expense over the remaining months in the twenty-four (24) month certification period. (8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**536. DEPENDENT CARE DEDUCTIONS.**

A household can get a deduction for the costs of dependent care. The care of a dependent must be necessary for job search, employment, or training. The maximum deductible amount each month is two hundred dollars (\$200) per dependent child under age two (2) and one hundred seventy-five dollars (\$175) for any other dependent. If a child in the household reaches his second birthday during the certification period, adjust the dependent care deduction ~~at the household's next recertification~~ the month after the child turns age two (2). The dependent care costs must be deducted from income. The dependent care must meet the criteria listed below: ~~(7-1-98)~~(6-1-01)T

- 01. Employment.** To accept employment or continue employment. (6-1-94)
- 02. Job Search.** To look for work. Person does not need to be subject to job search requirements. (6-1-94)
- 03. Training Or Education.** To attend training or to pursue education. The training or education must be preparation for employment. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**542. COSTS ALLOWED FOR SHELTER DEDUCTION.**

Shelter costs are current charges for the shelter occupied by the household. Shelter costs include costs for the home temporarily not occupied because of employment or training away from home or illness. The costs allowed for the shelter deduction are listed below: (6-1-94)

- 01. House Payments.** Mortgages, second mortgages, mortgage fees and land payments. (6-1-94)

- 02. Rent.** Rent and space rent. (6-1-94)
- 03. Condominium Fees.** The entire condominium fee, including fees for maintenance of the structure and the grounds. (3-30-01)
- 04. Loan Payments.** Loan repayments for the purchase of a mobile or motor home, including interest. (6-1-94)
- 05. Taxes And Insurance.** Property taxes, state, and local assessments and insurance on the structure. (6-1-94)
- 06. Utilities.** Costs of heating, cooling, cooking fuel, electricity, the basic service fee for one (1) telephone (including wire maintenance fees, subscriber line charges, relay center surcharges, and 911 fees), water, sewer, garbage and trash collection, well installation and maintenance, septic tank system installation and maintenance, and fees for initial utility installation. One-time deposits cannot be included. ~~(6-1-94)~~(6-1-01)T
- 07. Vehicle Payments.** Payments for vehicles used as the primary residence for the household. (6-1-94)
- 08. Costs For Home Repairs.** Nonreimbursable costs to repair a home damaged or destroyed by a natural disaster such as a fire or flood or earthquake. (6-1-94)
- 09. Home Temporarily Not Occupied.** Shelter costs for the home temporarily not occupied because of employment or training away from home or illness. This shelter cost may be in addition to the shelter cost for the home the household currently occupies. Shelter costs for the home temporarily not occupied because of abandonment caused by a natural disaster or casualty loss. This shelter cost may be in addition to the shelter cost for the home the household currently occupies. For shelter deduction for a vacated home: (6-1-94)
- a. The household must intend to return. (6-1-94)
  - b. Current occupants must not be claiming Food Stamp shelter costs. (6-1-94)
  - c. The home must not be leased or rented. (6-1-94)
  - d. ~~The SUA is not allowed for a temporarily unoccupied home.~~ (6-1-94)
  - e. ~~The household must claim actual costs for both the unoccupied home and its current residence.~~ (6-1-94)
- 543. STANDARD UTILITY ALLOWANCE (SUA).**  
The shelter deduction is computed using the SUA or actual utility costs. ~~The SUA is described below:~~ (6-1-94)
- ~~**01- Standard Utility Allowance (SUA).** The Standard Utility Allowance (SUA) can be used instead of actual costs of heating, cooling, cooking fuel, electricity, the basic service fee for one (1) telephone, water, sewer and garbage collection. The SUA is ~~one two~~ eighty-nine ~~thirty-one~~ thirty-one dollars (~~\$189~~231). The household must be told if actual utility costs exceed the SUA, the actual costs can be used if the household proves these costs. ~~(3-30-01)~~~~
- ~~**02- SUA Qualifications.** To qualify for the SUA, households must:~~ (6-1-94)
- ~~a- Receive direct or indirect energy assistance payments made under the Low Income Home Energy Assistance Act of 1981 (LIHEAP); or meet the conditions in Subsections 543.01 through 543.06. ~~(6-1-94)~~(8-1-01)T~~
- ~~**01. Primary Heating Or Cooling System.** The household must have a primary heating or cooling system to qualify for the SUA. A primary heating system is a central heating system, or space heating stove, used to heat the living quarters of the home. A cooling system is a central air conditioning system or a room air conditioner. The household must have out-of-pocket heating or cooling costs billed on a regular or irregular basis. The heating or~~

cooling costs must be separate from rent or mortgage payments. This includes households in private rental housing, billed by their landlords for individual usage or charged a flat rate, separately from rent. If not billed regularly for heating or cooling costs, the household must be otherwise Food Stamp eligible between billing periods.

~~(6-1-94)~~(8-1-01)T

**02. Cooling Costs.** If the household claims cooling costs, the household must have either an air conditioning system or a room air conditioner to qualify for the SUA.

~~(6-1-94)~~(8-1-01)T

**03. Heating Costs.** If the household claims heating costs, the household must have expenses for a primary source of heat. Households buying wood for their primary source of heat may get the SUA. Cutting their own wood for the primary source of heat does not qualify a household for the SUA. Supplemental heat sources like, space heaters, electric blankets, cook stoves and a secondary heat source like a fireplace do not qualify households for the SUA.

~~(6-1-94)~~(8-1-01)T

**04. Energy Assistance Excluded From Income.** If the household gets direct or indirect energy assistance that is excluded from income, the household gets the SUA if the amount of the expense exceeds the amount of the assistance.

(8-1-01)T

**05. Energy Assistance Not Excluded From Income.** If a household gets energy assistance that is not excluded from income, the household must also have out-of-pocket heating or cooling costs to get the SUA.

(8-1-01)T

**06. Occupied And Unoccupied Home.** A household with both an occupied home and an unoccupied home, is limited to one (1) SUA.

(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**546. SHARED UTILITY EXPENSES.**

The SUA must be prorated among some households sharing utility costs as listed in Subsections 546.01 through 546.02. ~~Prorate the SUA among the household, another individual not participating in the program, another household participating in the program, or both, if the household shares utility expenses with and lives with another individual, another household, or both.~~

(8-1-01)T

**01. Utility Expenses Shared With Persons Not In The Food Stamp Household.** Prorate the SUA, if the Food Stamp household lives with and shares heating and cooling expenses with another individual, another household, or both. Use the actual utility costs paid by households or household members if the prorated share cannot be determined. The actual utility costs must not exceed the total utility costs of the residence.

~~(6-1-94)~~(8-1-01)T

**02. Utility Expenses Shared With Ineligible Persons.** Do not prorate the SUA, if all persons sharing utility expenses with the Food Stamp household are excluded from the household only because they are Food Stamp ineligible. Allow the Food Stamp household the entire SUA.

(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**574. BENEFITS FOR PREVIOUSLY DISQUALIFIED HOUSEHOLD MEMBERS.**

The resources, income, and deductions of a previously ineligible household member must be determined. Add a previously disqualified household member the month following the last month in the sanction. The disqualification must have been due to an intentional program violation (IPV), work registration or Job Search Assistance Program (JSAP) sanction, ~~failure to meet the ABAWD work requirement,~~ voluntary quit or reduction of work hours, failure to comply with the SSN requirement, or ineligible legal non-citizen status. The person's resources, income, and deductions are counted the month the person is added to the household. Prorate benefits from the date the ABAWD becomes Food Stamp eligible by reaching eighty (80) hours by working, participating in a work program, or

combining work and work programs.

~~(7-1-98)~~(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**576. CERTIFICATION PERIODS.**

A certification period must be assigned for each household. Households must be assigned the longest certification period possible based on expected household circumstances. At the end of each certification period, entitlement to Food Stamps ends. Further eligibility starts only upon recertification based upon a newly completed application, an interview and verification. Benefits cannot be continued beyond the end of a certification period without a new determination of eligibility. (6-1-94)

**01. First Month Of Certification.** The first month the household is eligible is the first month in the certification period for initial applicants. Upon recertification, a new certification period begins. (6-1-94)

**02. Elderly Or Disabled Households.** Households in which all adult members are elderly or disabled, with stable income, must be certified for up to twenty-four (24) months. (12-1-00)T

**03. Farmworker Households.** Annual certification periods will be assigned to farmworkers who receive their annual salaries on a scheduled monthly basis. The income must not change as the amount of work changes. (6-1-94)

**04. Self-Employed For At Least One Year.** Self-employed households, working as self-employed for at least one (1) year, will be certified up to twelve (12) months. Income must be readily predictable and household circumstances must not be likely to change. (6-1-94)

**05. Self-Employed For Less Than One Year.** Households, self-employed less than one (1) year, will be certified up to six (6) months. Households self-employed for less than one (1) year are assigned a certification period to bring the household into the annual cycle. (6-1-94)

**06. Financial And Medical Assistance Households.** Households in which all adult members receive AABD, AABD-related Medicaid, or SSI will be assigned certification periods coinciding with the other program's review. To align the Food Stamp certification with the redetermination date for the AABD, AABD-related Medicaid or SSI program, the household's Food Stamp certification can be shortened or extended when the AABD, AABD-related Medicaid, or SSI application is initially approved. The Food Stamp certification period for these households may be extended up to twenty-four (24) months. The household must be notified of changes in the length of the certification period. (12-1-00)T

**07. Households Eligible For A Child Support Deduction.** Households eligible for a child support deduction with no record of regular child support or arrearage payments will be certified up to three (3) months. Households eligible for a child support deduction with a record of regular child support or arrearage payments will be certified for ~~up to~~ at least six (6) months, but no more than twelve (12) months. These requirements do not apply to households assigned certification periods under Subsections 576.02, 576.04, 576.05, and 576.06. ~~(7-1-98)~~(8-1-01)T

**08. Households Granted Separate Household Status.** Households consisting of a parent and that parent's children who have been granted separate household status will be assigned a certification period up to six (6) months. Financial and medical assistance households granted separate household status must be assigned certification periods up to six (6) months. (9-1-94)

**09. Stable Households.** Households with stable income or work records, except self-employed and farmworker households, are certified for ~~up to~~ at least six (6) months, but no more than twelve (12) months. The household should expect no major changes in income, deductions, or household composition. ~~(6-1-94)~~(8-1-01)T

**10. Stable Homeless Households.** Households in which all members are homeless, whose living arrangements reflect a stable living situation must be certified for ~~up to~~ at least six (6) months, but no more than

twelve (12) months. Stable living situations include living with another household. Living in transitional housing is not a stable living situation. ~~(6-1-94)~~(8-1-01)T

**11. Unstable Households.** Households will be certified for one (1) or two (2) months, when the household has an ABAWB member, cannot predict its future circumstances, or when frequent changes in income or household status is expected. Households must be certified for the period the household can predict its circumstances, household status, and household income. Migrant and seasonal farmworkers, whose income is subject to large fluctuations during the work season will be certified for one (1) to two (2) months. The income fluctuation may be due to uncertainty of continuous employment, or due to bad weather, or other circumstances. ~~(6-1-94)~~(8-1-01)T

**12. Residents Of Alcohol And Drug Abuse Centers.** Residents of alcohol and drug abuse centers may be certified for periods of one (1) to six (6) months depending on the length of the treatment or rehabilitation program. (6-1-94)

**13. Certifications After The Fifteenth Of The Month.** Households eligible for a certification period of three (3) or fewer months must have their certification period increased by one (1) month if the application is approved after the fifteenth (15th) day of the application month and the household's circumstances warrant the longer period. (6-1-94)

**577. LENGTHENING THE CERTIFICATION PERIOD.**

The certification period can be lengthened, after the household is certified. The total certification period cannot exceed twenty-four (24) months for a household of elderly or disabled members, and twelve (12) months for other households. Send the household notice of the new certification period ending date. (8-1-01)T

~~577~~. -- 580. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**612. HOUSEHOLD MUST REPORT CHANGES.**

Households must report any changes listed below: (6-1-94)

**01. Household Composition.** Households must report when a person enters or leaves the Food Stamp household. (7-1-97)

**02. Residence.** Households must report residence changes and resulting shelter cost changes. (6-1-94)

**03. Subsidized Rent.** Households must report any change in subsidized rent. (7-1-99)

**04. Unearned Income.** Households must report changes in an unearned income source. Households must report changes in unearned gross monthly income of twenty-five dollars (\$25) or more, except changes in TAFI or AABD grants. This includes vendor payments and reimbursements. (7-1-98)

**05. Earned Income.** Households must report a change in an earned income source. Households must report a change in hourly rate or salary. Households must report a change from part-time to full-time work or full-time to part-time work. Work of less than thirty (30) hours weekly is part-time work. Thirty (30) or more hours weekly is full-time work. (7-1-94)

**06. Vehicles.** Households must report any change in the number or type of licensed vehicles. (6-1-94)

**07. Resources.** Households must report changes in cash on hand, stocks, bonds, savings, and bank accounts combining to reach or exceed two thousand dollars (\$2,000). (6-1-94)

**08. Child Support.** Households must report changes in legal obligations. Legal obligations include but are not limited to changes in the child support amount or the child reaches an age at which child support is no longer

legally obligated. (7-1-98)

**09. ABAWDs Work Hours.** If total work or work program hours drop below eighty (80) hours per month, ABAWDs must report the change to the Department, within ten (10) days of the date of change. (8-1-01)T

**613. DEPARTMENT MUST TAKE ACTION ON CHANGES.**

The Department must act when changes are reported or become known to the Department. (6-1-94)

**01. Documentation.** Changes must be documented in the case record, even if there is no change in the Food Stamp amount. (6-1-94)

**02. Change Report Form.** A new Change Report Form (HW 0594 or HW 0586) must be given or sent to the household when a change is reported. (6-1-94)

**03. Receipt Of Report Notice.** The Department must notify the household when the report is received. A Notice of Decision meets this requirement, when notifying the household of a benefit determination. (6-1-94)

**04. Proof.** ~~Inform~~ Give the household ~~that a written request for proof-of-changes-is-required.~~ The request for proof must clearly advise the household of the proof it must provide, or the action it must take. Allow the household at least ten (10) days to respond, either by telephone or by correspondence. The household must be told failure to provide the proof will result in decreased or stopped benefits. The Department must document how the request for proof was made. ~~(6-1-94)~~(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**616. DECREASES OR CLOSURE OF FOOD STAMPS.**

If a change results in a decrease or closure of Food Stamps, the Department must provide notice. The notice must be sent within ten (10) days of the date the change is reported. The change must be effective the first month following timely notice, unless the change does not require ten (10) day advance notice. If the household does not respond to the request for proof, or does respond but refuses to provide sufficient information or fails to provide required proof of a change affecting eligibility by the requested date, the Department must send a closure notice. The notice must explain the reason for the closure. The notice must advise the household of the need to submit a new application if it wishes to continue participating in the program. If the household fails to provide required proof of a change affecting Food Stamp amount by the requested date, and the change would result in decreased benefits, no deduction is allowed or benefits are decreased. If the household provides the change verification after the date requested, act on the change as if it was an increase. The effective date of the change is the month after the month the change is verified.

~~(6-1-94)~~(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**620. REFUSAL TO COOPERATE.**

If the Department determines a household refused to cooperate in establishing eligibility, the household's eligibility must end. Refusal to cooperate includes, but is not limited to, a refusal to act without good cause or in a timely manner. Refusal to cooperate includes willful misrepresentation. Notify the household of refusal to cooperate with a Notice of Decision. If the household fails to cooperate, as opposed to refuses to cooperate, do not deny the household. Assist the household in obtaining necessary proof of eligibility. ~~(6-1-94)~~(6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**622. CHANGE ENDS TAFI OR AABD INCOME.**

A change ending a household's income from TAFI or AABD during the certification period may affect Food Stamp eligibility. Do not close a household's Food Stamp benefits just because of a TAFI or AABD closure. Close Food Stamps only if the household fails to satisfy the eligibility requirements for Food Stamps. If the household appeals and TAFI or AABD is continued, continue Food Stamps at the same level. If a TAFI or AABD notice is not required or the household does not appeal, send a notice explaining the household's benefits will end due to changes which may affect eligibility and/or benefit level. A notice must be sent to the household when Food Stamp benefits change because of a TAFI or AABD change. If TAFI or AABD ends and they remain Food Stamp eligible, advise the household of the work registration requirements. When the certification is shortened to reflect changes, the certification period must not end earlier than the month after the notice is issued, allowing adequate time to send a ~~Notice of Expiration~~ and for the household to timely reapply. ~~(7-1-98)~~(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**645. RECERTIFICATION PROCESS.**

Recertification procedures are listed below: (6-1-94)

**01. Notice Of Recertification.** The Department must give households a ~~Notice of Expiration~~ recertification and a recertification form before the certification period ends. ~~(6-1-94)~~(6-1-01)T

a. Households certified two (2) months or longer must get a ~~Notice of Expiration form~~ recertification and a recertification form during the calendar month before the last month of certification. ~~(7-1-95)~~(6-1-01)T

b. If certification is not completed until the second month of a two (2) month certification, the Department must give a ~~Notice of Expiration~~ recertification and a recertification form at the time certification is completed. ~~(6-1-94)~~(6-1-01)T

c. If the household is certified for one (1) month, the Department must give a ~~Notice of Expiration~~ recertification and a recertification form at the time certification is completed. ~~(6-1-94)~~(6-1-01)T

**02. Recertification Interview.** The Department must: (6-1-94)

a. Conduct a complete interview with a household member or authorized representative at least once every twelve (12) months. ~~(6-1-94)~~(8-1-01)T

b. Schedule the interview during the notice of expiration period so households have at least ten (10) days after the interview to provide proof before the certification period expires. ~~(7-1-95)~~(8-1-01)T

c. Permit the household member or authorized representative to complete the recertification form before or during the interview. (6-1-94)

d. The household must submit the recertification form no later than the interview date. (6-1-94)

**03. Recertification Time Limits.** If the reapplication is timely, the Department must recertify eligible households effective the month after the current certification ends. (9-1-94)

**04. Initial Month Or Beginning Month Benefits.** (6-1-94)

a. A household applies for recertification before the end of certification. There is no break in benefits. The first month of new eligibility is not an initial month. The household gets a full month's Food Stamp issuance. Benefits are not pro-rated for the first month. (6-1-94)

b. A household applies for recertification before the certification ends. The household is not eligible the month after certification ends. The first month of eligibility, after at least one (1) month without benefits, is

counted as an initial month. Benefits are prorated from the date of application. (6-1-94)

**05. Delayed Recertification Processing.** The Department handles delayed processing of recertifications as described in Subsections 645.05.a. through 645.05.d. (6-1-01)T

a. If an eligible household files an application before the end of the certification period but, through the fault of the Department, recertification cannot be completed within thirty (30) days, the department shall: (6-1-01)T

i. Continue to process the case. (6-1-01)T

ii. Provide a full allotment, back to the date the certification period should have begun, had the Department not caused the delay. (6-1-01)T

b. If an eligible household files an application before the end of the certification period, but fails to take a required action, the Department may deny the case at the end of the certification period. The household still has thirty (30) days, after the end of the certification period, to take the required action. (6-1-01)T

i. If the household takes the required action before the end of the certification period, the Department shall reopen the case and provide a full allotment for the first month of the new certification period. (6-1-01)T

ii. If the household takes the required action after the end of the certification period, but within thirty (30) days after the end of the certification period, the Department shall reopen the case, and provide Food Stamps back to the date the household took the required action. (6-1-01)T

c. If an eligible household files an application within thirty (30) days after the end of the certification period, the Department shall treat the case as a recertification, and prorate the first month's allotment from the date the household filed the application. (6-1-01)T

d. The Department shall provide restored benefits if, through the fault of the Department, an eligible household files an application beyond the first of the month, of what should have been its new certification period. The Department shall restore benefits back to the date the certification period should have begun, had the Department not caused the delay in application. (6-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**675. ~~OVERISSUANCE CLAIMS AGAINST HOUSEHOLDS IPV, IHE AND AE FOOD STAMP CLAIMS.~~**  
*When more Food Stamps are issued than a household is eligible for, an overissuance exists. The Department must begin a Food Stamp Intentional Program Violation (IPV), Inadvertent Household Error (IHE), or Administrative Error (AE) claim against any household with a Food Stamp overissuance. All adult household members are jointly and separately liable for the value of overissuances. The adult household members, in the household at the time of the overissuance, are liable whether residing in the household with the claim or in any other household. An overissuance does not exist when the household does not pay a budgeted expense. An overissuance does not exist if the Department did not ensure the household signed the application, registered for work or provided or applied for an SSN. An overissuance exists when the amount of Food Stamps issued exceeds the Food Stamps a household is eligible to receive. The Department must establish a claim against the household, to recover the value of Food Stamps overissued or misused. A claim is an action by the Department to recover the value of Food Stamps paid. The types of Food Stamp claims are listed in Subsections 675.01 through 675.03 of these rules.* (7-1-98)(8-1-01)T

**01. Intentional Program Violation (IPV) Claim.** An IPV claim is an overissuance caused by an intentional, knowing, and willful program violation. (8-1-01)T

**02. Inadvertent Household Error (IHE) Claims.** An IHE is a household error, without intent to cause an overissuance, which results in a Food Stamp over-issuance. Causes of IHE claims are: (8-1-01)T

a. Failure to give information. A household, without intent to cause an over-issuance, fails to give correct or complete information. (8-1-01)T

b. Failure to report change. A household, without intent to cause an over-issuance, fails to report changes or to report at all. (8-1-01)T

c. Failure to comply. A household, without intent to cause an over-issuance, fails to comply due to language barrier, educational level, or not understanding written or verbal instructions. (8-1-01)T

d. Pending hearing. A household gets continued Food Stamps pending a fair hearing decision. The hearing decision, when made, is against the household. (8-1-01)T

e. Pending IPV. An IHE claim occurs between the time of an IPV referral, and the IPV decision. (8-1-01)T

**03. Agency Error Claim (AE).** An agency error claim results from an overissuance caused by a Department action, or a failure to act. (8-1-01)T

**676. INADVERTENT HOUSEHOLD ERRORS (IHE) PERSONS LIABLE FOR FOOD STAMP CLAIMS.**  
*An IHE is an accidental household error resulting in a Food Stamp overissuance. Causes of IHE claims are listed below.* The persons listed in Subsections 676.01 through 676.03 are responsible for paying a claim. (6-1-94)(8-1-01)T

**01. Failure To Give Information.** An IHE claim occurs when a household unintentionally fails to give correct or complete information. **Adult Household Members.** Adult members of the household at the time of the overissuance or trafficking, are liable. They are individually and jointly liable, whether residing in the household where the claim arose, or in any other household. (6-1-94)(8-1-01)T

**02. Failure To Report Change.** An IHE claim occurs when a household unintentionally fails to report changes or to report at all. **Sponsor Of An Alien.** The sponsor of an alien household member, if the sponsor is at fault for the claim. (6-1-94)(8-1-01)T

**03. Failure To Comply.** An IHE claim occurs when a household unintentionally fails to comply due to language barrier, educational level, or not understanding written or verbal instructions. **Person Connected To The Household.** A person connected to the household, such as an authorized representative, who actually traffics, or causes an overissuance or trafficking. (6-1-94)(8-1-01)T

**04. Pending Hearing.** An IHE claim occurs when a household gets continuing Food Stamps pending a fair hearing decision and the decision is against the household. (6-1-94)

**05. Pending IPV.** An IHE claim occurs between the time of an IPV referral and an IPV decision. (6-1-94)

**677. COMPUTING IHE FOOD STAMP CLAIMS.**  
*The IHE claim is the difference between the Food Stamps the household received and the Food Stamps they should have received. Compute the claim back to the month the IHE occurred. Do not allow the earned income deduction when determining an overissuance due to a household's failure, without good cause, to report earned income on time. Do not compute more than six (6) years before the date the overissuance was discovered. The first month of overissuance is the month the Food Stamp amount would have decreased if the change had been reported. The change can never be later than two (2) months after the error occurred. The Department must offset the claim against any amounts not yet restored to the household. The Department computes Food Stamp claims as described in Subsections 677.01 and 677.02 of these rules.* (7-1-98)(8-1-01)T

**01. Claims Not Related To Trafficking.** The Department computes claims, not related to trafficking, back to a minimum of twelve (12) months before it became aware of the overissuance. The Department does not compute claims, not related to trafficking, back more than six (6) years. For an IPV claim, the Department computes

back to the month the first act of IPV occurred. The Department continues to compute back a minimum of twelve (12) months before the first act of IPV. The Department does not compute IPV claims back more than six (6) years before the first act of IPV. The Department follows these steps to calculate the amount of the claim. (8-1-01)T

- a. Compute the correct Food Stamp issuance for each month the household received an overissuance. (8-1-01)T
- b. Do not apply the earned income deduction to any earned income the household failed to report on time, if income reporting is the basis for the claim. Apply the earned income deduction to AE claims. (8-1-01)T
- c. Subtract the correct amount of Food Stamps from the benefits actually received. The difference is the amount of the overissuance. Dismiss the claim referral if the answer is zero (0) or negative. (8-1-01)T
- d. Subtract any benefits expunged from the household's EBT Food Stamp account from the overissuance. The difference is the amount of the claim. (8-1-01)T

**02. Trafficking-Related Claims.** Claims arising from trafficking-related offenses are the value of the trafficked Food Stamps as determined by: (8-1-01)T

- a. The individual's admission. (8-1-01)T
- b. Adjudication. (8-1-01)T
- c. The documentation forming the basis for the trafficking determination. (8-1-01)T

**678. IHE DEMAND FOR REPAYMENT ESTABLISHING A CLAIM.**

*The Department must send a completed Demand Letter for Overissuance and Repayment Agreement (HW 0544) to the household. If the Department delivers the demand letter in person, the household must tell the Department its choice of repayment method on that day. If the Department delivers the demand letter by mail, the household must tell the Department its choice of repayment method, within twenty (20) days of the mailing date of the demand letter. The Department will establish claims, or dismiss all claim referrals, before the last day of the quarter after the quarter when the Department discovers the overissuance or trafficking. The Department establishes claims on the households listed in Subsections 678.01 through 678.04 of these rules.* (6-1-94)(8-1-01)T

**01. Currently Participating Households.** Households currently participating in the Food Stamp program, regardless of the claim amount. (8-1-01)T

**02. Households With Established Claims.** Households with claims already established. (8-1-01)T

**03. Overissuance Discovered By Quality Control.** Households with overissuances discovered by a quality control review, regardless of the claim amount. (8-1-01)T

**04. Households Not Currently Participating.** Households not currently participating in the Food Stamp program, if the claim is more than one hundred twenty-five dollars (\$125). (8-1-01)T

**679. ACTION AGAINST IHE HOUSEHOLDS FAILING TO RESPOND.**

*If the household fails to respond to the demand letter within twenty (20) days, reduce the Food Stamps by allotment reduction as soon as possible after notice. If the household requested continued Food Stamps or is getting continued Food Stamps at the time the household makes repayment choice, Food Stamp reduction must not begin until an adverse fair hearing decision is issued or the certification period ends and a new certification period begins.* (6-1-94)

**680. COLLECTING IHE CLAIMS.**

*Food Stamps are reduced by ten percent (10%) of the monthly Food Stamps or ten dollars (\$10) per month, whichever is greater. Food Stamps must not be withheld from an initial month's benefits.* (2-1-01)T

**01. Household Fails To Pay.** Send a notice if the household fails to pay under the repayment agreement, by paying nothing or less than agreed. (7-1-98)

- a. ~~The notice must state insufficient or no payment was received.~~ (6-1-94)
- b. ~~The notice must state the household may contact the Department to renegotiate their repayment agreement.~~ (6-1-94)
- e. ~~The notice must state if the household fails to make the overdue payment or to contact the Department to discuss renegotiation, the current Food Stamps will be reduced without further notice.~~ (6-1-94)

~~**02. Household Renegotiates Repayment.** If the household requests renegotiation, decide if their financial circumstances allow payment renegotiation. If their financial circumstances warrant renegotiation, negotiate a new repayment agreement. If renegotiation is not feasible, continue renegotiation until a settlement is reached. Begin allotment reduction if a settlement is not reached. Notice is not required.~~ (7-1-98)

~~**03. Household Fails To Respond To Notice.** Begin allotment reduction if a Food Stamp household fails to respond to the notice.~~ (6-1-94)

~~**04. IHE Collection By Treasury Offset Program (TOP).** Past Due claims can be submitted for collection through TOP as specified in 7CFR 273.18 (n). The claim must meet the following criteria:~~ (2-1-01)F

- a. ~~The claim is properly established.~~ (7-1-97)
- b. ~~No person liable for the claim currently participates in a Food Stamp household.~~ (7-1-97)
- e. ~~The claim is for at least thirty dollars (\$30). Multiple claims may be combined to total thirty dollars (\$30).~~ (7-1-97)
- d. ~~The date of the first demand letter is within ten (10) years of the quarterly TOP submission. There is no time limit on court judgements.~~ (2-1-01)F
- e. ~~Voluntary or involuntary payments are one hundred eighty (180) days past due.~~ (2-1-01)F

~~**05. TOP Notices.** Sixty (60) days before referring claims for collection under TOP, the Department will provide the person with a notice of intent to collect via Treasury offset. The notice must inform the person of their right to request a Department review of the intended collection action. The request for review must be received within sixty (60) days of the notice of intent. The Department will determine if the claims in question are past due and legally enforceable based on a review of its records or other information submitted by the person. The Department will notify the person in writing if it is determined the claim is past due and legally enforceable and the Department intends to refer the claim to TOP for offset. The notice of determination must inform the person of the right to request that FCS review the Department's decision. The notice must include instructions for requesting a review by FCS and the address of the FCS regional office.~~ (2-1-01)F

~~**06. TOP Effect On The Person.** When a claim is referred to TOP, any eligible Federal payment owed to the person may be intercepted, and applied to the claim to reduce the debt. The person may be required to pay collection or processing fees charged by the Federal government to intercept the payment.~~ (2-1-01)F

~~**681. EXCEPTIONS FOR STARTING IHE COLLECTION.**~~

~~Do not start collection action on IHE claims when the claim is collected through an offset. Do not start collection action on IHE claims when the claim is less than thirty-five dollars (\$35) and cannot be recovered by allotment reduction. Do not start collection action on IHE claims when the Department finds the household cannot be located. Do not start collection action on IHE claims when the collection action may prejudice the IPV determination.~~ (6-1-94)

~~**682. HOUSEHOLD MEMBERS CHANGE WHEN IHE EXISTS.**~~

~~The Department must collect against any or all adult members of the household which received the overissuance. If household membership changes, collect from any household having a member who was an adult member of the household with the overissuance. Offset the claim against any household with a member who was an adult member of~~

~~the original household when the overissuance occurred. (6-1-94)~~

**~~683. SUSPENDING OR ENDING IHE CLAIM.~~**

~~IHE claims may be suspended when at least one (1) demand letter was sent to a household not getting Food Stamps and the household cannot be located. IHE claims may be suspended when at least one (1) demand letter was sent to a household not getting Food Stamps and the cost of further action may exceed the recovery amount. IHE claims may end when the claim is determined uncollectible after three (3) years in suspense. (6-1-94)~~

**~~684. -- 686. (RESERVED).~~**

**~~687. ADMINISTRATIVE ERROR CLAIMS.~~**

~~An administrative error is an overissuance due to an action or failure to act by the Department. The Administrative Error claim is the difference between the Food Stamps the household received and the Food Stamps they should have received. Compute the claim back to the month the administrative error occurred. Do not go back more than twelve (12) months before the date the overissuance was discovered. When the Department did not act on timely change report, the first claim month is the first month the change would have affected Food Stamp amount. The first change month must not be later than two (2) months after the month the change occurred. The Department must offset the claim against any amounts not yet restored. (7-1-98)~~

**~~688. ADMINISTRATIVE DEMAND LETTER.~~**

~~The Department must start collection by sending the household a completed Demand Letter for Overissuance and Repayment Agreement (HW 0544). The Department must allow the household twenty (20) days to decide on a repayment method and inform the department. (7-1-98)~~

**~~689. ACTION AGAINST ADMINISTRATIVE ERROR HOUSEHOLD FAILING TO RESPOND.~~**

~~If the household fails to respond to the demand letter within twenty (20) days, reduce the Food Stamp allotment as soon as possible after notice. If the household requested continued Food Stamps, or is getting continued Food Stamps when it makes a repayment choice, reduction must not begin until an adverse fair hearing decision is issued or the certification ends and a new certification period begins. (7-1-98)~~

**~~690. ADMINISTRATIVE ERROR COLLECTION ACTION NOT TAKEN.~~**

~~When the claim is collected by offset no further collection action is necessary unless there is a balance owed. Except for reconciliation claims, collection action is not started if the claim is less than one hundred dollars (\$100). Collection action is not started if the Department finds the household cannot be located. Collection action is not started if the Department or FCS are taking steps to disqualify a drug or alcohol rehabilitation center and collection action may prejudice the case. (7-1-98)~~

**~~691. RECONCILIATION CLAIMS.~~**

~~The Department must account for all issuances through a reconciliation process. The Department must reconcile incorrectly authorized issuances. Reconciliation errors are administrative errors identified by Central Office. Collection action is initiated on all reconciliation claims regardless of the amount. (6-1-94)~~

**~~679. -- 691. (RESERVED).~~**

**~~692. SUSPENDING AND ENDING ADMINISTRATIVE ERROR DETERMINING DELINQUENT CLAIMS.~~**

~~Administrative error claims may be suspended when at least one (1) demand letter was sent to household not getting Food Stamps and the household cannot be located. Administrative error claims may be suspended when at least one (1) demand letter was sent to household not getting Food Stamps and the cost of further action may exceed the recovery amount. Administrative error claims may be stopped when the claim is determined uncollectible by holding in suspense three (3) years. The Department determines if a claim is delinquent by using Subsections 692.01 through 692.05 of these rules. (6-1-94)(8-1-01)T~~

**01. Claim Not Paid By Due Date.** The claim is delinquent if not paid by the due date, and there is not a satisfactory payment arrangement. The claim remains delinquent until paid in full, a satisfactory repayment agreement is negotiated, or allotment reduction is invoked. (8-1-01)T

**02. Payment Arrangement Not Followed.** The claim is delinquent if a payment arrangement is established, but scheduled payment is not made by the due date. The claim remains delinquent until paid in full, allotment reduction is invoked, or the Department agrees to resume or re-negotiate the repayment schedule.

(8-1-01)T

**03. Previous Claim.** A claim is not delinquent if another claim for the same household is being paid through an installment agreement or allotment reduction. The Department begins collection on the new claim after the first claim is settled.

(8-1-01)T

**04. Collection Coordinated Through Court.** A claim is not delinquent if the Department is unable to determine delinquency status because collection is coordinated through the court system.

(8-1-01)T

**05. Claim Awaiting Hearing Decision.** A claim awaiting a hearing decision is not delinquent. If later the hearing officer affirms a claim does exist against the household, the Department notifies the household.

(8-1-01)T

**693. COLLECTING ADMINISTRATIVE ERROR CLAIMS.**

*The Department must collect against any or all adult members of the household with the AE claim. If household membership changes, collect from any previous adult member of the household with the claim.*

(2-1-01)F

~~**01. Household Fails To Repay.** Send a notice if the household fails to pay under a repayment agreement by paying nothing or less than agreed. The notice must state insufficient or no payment was received. The notice must state the household may contact the Department to renegotiate their repayment agreement. If the household requests renegotiation, negotiate a new repayment agreement. Begin allotment reduction if a settlement is not reached. Notice is not required.~~

(7-1-98)

~~**02. Food Stamp Amount Reduced.** The amount of Food Stamp reduction will not exceed the greater of ten percent (10%) of monthly Food Stamps or ten dollars (\$10) per month, unless the household requests a higher amount, in writing.~~

(7-1-98)

~~**03. Department Must Not.** The Department must not start allotment reduction from an initial month's benefits.~~

(7-1-98)

~~**04. AE Collection By Treasury Offset Program (TOP).** Past Due claims can be submitted for collection through TOP as specified in 7 CFR 273.18(n). The claim must meet the criteria in Subsections 713.04.a. through 713.04.e.~~

(2-1-01)F

~~a. The claim is properly established.~~

(2-1-01)F

~~b. No person liable for the claim currently participates in a Food Stamp household.~~

(2-1-01)F

~~c. The claim is for at least thirty dollars (\$30). Multiple claims may be combined to total thirty dollars (\$30).~~

(2-1-01)F

~~d. The date of the first demand letter is within ten (10) years of the quarterly TOP submission.~~

(2-1-01)F

~~e. Voluntary or involuntary payments are one hundred eighty (180) days past due.~~

(2-1-01)F

**05. TOP Notices.** Sixty (60) days before referring claims for collection under TOP, the Department will provide the person a notice of intent to collect via Treasury offset. The notice must inform the person of their right to request a Department review of the intended collection action. The Department must receive the request for review within sixty (60) days of sending the notice of intent. The Department will determine if the claims are past due and legally enforceable, based on a review of its records or information submitted by the person. The Department will notify the person in writing if it determines the claim is past due and legally enforceable, and intends to refer the claim to TOP for offset. The notice of determination must inform the person of the right to request that FCS review the Department's decision. The notice must include instructions for requesting a review by FCS and the address of the

*FCS regional office.*

(2-1-01)F

**06.** **TOP Effect On The Person.** *When a claim is referred to TOP, any eligible Federal payment owed to the person may be intercepted, and applied to the claim to reduce the debt. The person may also be required to pay collection or processing fees charged by the Federal government to intercept the payment.* (2-1-01)F

**6943.---697.** (RESERVED).

**694. COLLECTING CLAIMS.**

The Department collects payment for claims using the methods listed in Subsections 695.01 through 695.06 of these rules. (8-1-01)T

**01. Allotment Reduction.** The Department reduces the Food Stamp allotment to collect the claim. (8-1-01)T

a. For an IPV claim, the allotment reduction limit is the greater of twenty dollars (\$20) per month or twenty percent (20%) of the household's monthly allotment. (8-1-01)T

b. For an IHE or AE claim, the allotment reduction limit is the greater of ten dollars (\$10) per month or ten percent (10%) of the household's monthly allotment. The household can agree to a higher amount. (8-1-01)T

c. The Department does not reduce the initial month's Food Stamps, unless the household agrees to this reduction. (8-1-01)T

**02. Repayment From EBT Account.** The household pays the claim from its Electronic Benefit Transfer (EBT) account. (8-1-01)T

**03. Cash, Check, Or Money Order.** Payment by cash, check, or money order. (8-1-01)T

**04. Paper Food Coupons.** Payment by paper Food Coupons. (8-1-01)T

**05. Household Performing Public Service.** Payment by public service as ordered by a court, specifically as payment of a claim. (8-1-01)T

**06. Collection By Treasury Offset Program (TOP).** The Department submits claims delinquent for one hundred and eighty (180) days, or more, for collection through TOP. (8-1-01)T

**695. TOP NOTICES.**

Sixty (60) days before referring claims for collection under TOP, the Department will provide the household with a notice of intent to collect via Treasury offset. The notice must inform the household of the right to request a Department review of the intended collection action. The Department must receive the request for review within sixty (60) days of the notice of intent to collect. The notice of review determination must inform the household of the right to request that FNS review the Department's decision. The notice must include instructions for requesting a review by FNS and the address of the FNS regional office. (8-1-01)T

**696. EFFECTS OF TOP ON THE FOOD STAMP HOUSEHOLD.**

When a claim is referred to TOP, any eligible Federal payment owed to the household may be intercepted, and applied to the claim to reduce the debt. The household may be required to pay collection or processing fees charged by the Federal government to intercept the payment. (8-1-01)T

**697. Removing A Claim From TOP.**

The Department removes a claim from TOP under the conditions listed in Subsections 697.01 through 697.05 of these rules. (8-1-01)T

**01. Instructed By FNS Or Treasury.** FNS or Treasury instructs the Department to remove the debt from TOP. (8-1-01)T

**02. Household Undergoing Allotment Reduction.** The person is a member of a Food Stamp household undergoing allotment reduction. (8-1-01)T

**03. Claim Is Paid In Full.** The claim is paid in full. (8-1-01)T

**04. Claim Is Satisfied.** The claim is satisfied through a hearing, termination, compromise, or other means. (8-1-01)T

**05. Payments Resumed.** The household makes arrangements to resume payments. (8-1-01)T

**698. INTENTIONAL PROGRAM VIOLATION (IPV).**

An IPV includes ~~client~~ the actions listed ~~below~~ in Subsections 698.01 through 698.03 of these rules. The client must intentionally, knowingly, and willfully commit a program violation. ~~An IPV penalty can occur without an overissuance claim.~~ (6-1-94)(8-1-01)T

**01. False Statement.** A person makes a false statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

**02. Misleading Statement.** A person makes a misleading statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

**03. Misrepresenting.** A person misrepresents facts to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

**04. Concealing.** A person conceals or withholds facts to get Food Stamps. (6-1-94)

**05. Violation Of Regulations.** A person commits any act violating the Food Stamp Act or Federal regulations. A person commits any act violating State Food Stamp regulations. The violation may relate to Food Stamps or Authorization to Participate (ATP) use, presentation, transfer, acquisition, receipt, or possession of Food Stamps. (6-1-94)(8-1-01)T

**06. Trafficking In Food Stamps.** Trafficking in Food Stamps means the buying or selling of coupons, ATP cards or other benefit instruments for cash, or consideration other than eligible food. Trafficking includes the exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of Title 21, US Code, for coupons or other benefit instruments. (8-1-01)T

**699. ESTABLISHING AN INTENTIONAL PROGRAM VIOLATION (IPV) CLAIM.**

The Department establishes ~~An~~ IPV ~~may be established~~ by the actions listed ~~below~~ in Subsections 699.01 through 699.04 of these rules. (6-1-94)(8-1-01)T

**01. Waiver.** The client signs a waiver to a disqualification hearing. (6-1-94)

**02. Disqualification Consent.** The client signs a disqualification consent form to prevent court action by the Department. (6-1-94)

**03. Hearing.** An administrative disqualification hearing determines an IPV. (6-1-94)

**04. Judgement.** A court judgement determines an IPV. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. PENALTIES FOR AN IPV.**

IPV persons are ineligible for Food Stamps for twelve (12) months for the first violation. IPV persons are ineligible for Food Stamps for twenty-four (24) months for the second violation. IPV persons are ineligible for Food Stamps

permanently for the third violation. The Department must impose penalties if the court does not impose a disqualification period. The imposed penalties must not be contrary to the court order. The Department will disqualify only the person or persons who committed the IPV. The Department will notify the person in writing of the disqualification penalty. The penalty continues without interruption until completed, regardless of the eligibility of the disqualified person. An IPV penalty can be imposed, even if no overissuance claim exists.

(7-1-98)(8-1-01)T

**01. Administrative Disqualification Hearings.** The disqualification shall begin no later than the first day of the second month following the date the person gets written notice of the disqualification.

(8-1-01)T

**02. Waivers.** The disqualification shall begin the first day of the month, following the date the person gets the written notice of disqualification.

(8-1-01)T

**03. Court Decisions.** The disqualification shall begin on the date imposed by the court (to start the beginning of the following month) or, if no date is specified, within forty-five (45) days of the date the disqualification was ordered, beginning the first day of the month.

(8-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~703. COMPUTING IPV CLAIMS.~~**

~~Compute the difference between the Food Stamps the household received and the Food Stamps they should have received. The twenty percent (20%) earned income deduction cannot be deducted for nonreported earned income overissuances. Compute the claim back to the month the IPV occurred. Do not compute back more than six (6) years before the overissuance discovery date. The first month of the overissuance is the first month the change would have been effective if reported as required. The first overissuance month must never be later than two (2) months after the IPV occurred. Offset the claim against any amounts not yet restored to the household.~~

~~(4-5-00)~~

**~~704. STARTING IPV CLAIM COLLECTION ACTION.~~**

~~Start collection against the household by personal contact, if possible. The Department must start IPV collection even if it was formerly started as an IHE claim. The Department should not start the IPV claim if the overissuance is repaid. The Department should not start the IPV claim if there is case record evidence the household cannot be located. The Department should not start the IPV claim if collection action will prejudice the case. The Department should request the restitution matter be brought before the court when the IPV is decided by the court. The Department should address restitution in the agreement when the IPV is decided by signing the deferred adjudication agreement.~~

~~(6-1-94)~~

**~~705. IPV DEMAND FOR REPAYMENT.~~**

~~The Department must send a completed Demand Letter for Overissuance and Repayment Agreement (HW 0544) to the household. If the Department delivers the demand letter in person, the household must tell the Department its choice of repayment method on that day. If the Department delivers the demand letter by mail, the household must tell the Department its choice of repayment method, within ten (10) days of the mailing date of the demand letter.~~

~~(6-1-94)~~

**~~706. ACTION AGAINST IPV HOUSEHOLDS FAILING TO RESPOND.~~**

~~If the household fails to respond to the demand letter within ten (10) days, reduce the Food Stamps by allotment reduction as soon as possible after notice. If the household requested continued Food Stamps or is getting continued Food Stamps at the time the household makes repayment choice, Food Stamp reduction must not begin until an adverse fair hearing decision is issued or the certification period ends and a new certification period begins.~~

~~(6-1-94)~~

**~~707. SUSPENDING IPV CLAIMS.~~**

~~An IPV claim may be suspended if the Department meets a condition listed below:~~

~~(6-1-94)~~

~~**01. Household Cannot Be Located.** The Department has case record documents showing the household cannot be located.~~

~~(6-1-94)~~

- ~~02. **Letters Sent.** If the household is not getting Food Stamps the Department has sent: (6-1-94)~~
- ~~a. One (1) demand letter for claims under one hundred dollars (\$100). (6-1-94)~~
  - ~~b. Two (2) demand letters for claims between one hundred dollars (\$100) and four hundred (400) dollars. (6-1-94)~~
  - ~~c. Three (3) demand letters for claims exceeding four hundred dollars (\$400). (6-1-94)~~

~~03. **Cost More Than Recovery Amount.** The Department determines further action against a household, not getting Food Stamps, may cost more than the recovery amount. (6-1-94)~~

~~708. **HOUSEHOLD MEMBERS CHANGE WHEN IPV EXISTS.**~~

~~The Department must collect against any or all adult members of the household which received the overissuance. If household membership changes, collect from any household having a member who was an adult member of the household with the overissuance. Offset the claim against any household with a member who was an adult member of the original household when the overissuance occurred. (6-1-94)~~

**7093. PENALTIES FOR IPV RECEIPT OF MULTIPLE BENEFITS.**

A person found making a fraudulent statement or representation about identity or residence to get multiple benefits is ineligible for Food Stamps for ten (10) years for the first and second offenses and permanently for the third offense. (7-1-99)

~~710.---712. (RESERVED).~~

~~713. **COLLECTING IPV CLAIMS.**~~

~~The Department must collect against any or all adult members of the household with the IPV claim. If household membership changes, collect from any previous adult member of the household with the claim. (2-1-01)F~~

~~01. **Household Fails To Pay.** Send a notice if the household fails to pay under the repayment agreement, by paying nothing or less than agreed. The notice must state: (7-1-98)~~

- ~~a. No payment, or not enough payment, was received. (6-1-94)~~
- ~~b. The household may contact the Department to renegotiate their repayment agreement. (6-1-94)~~
- ~~c. If the household fails to make the overdue payment or to contact the Department to discuss renegotiation, the current Food Stamps will be reduced without further notice. (6-1-94)~~

~~02. **Household Renegotiates Repayment.** If the household requests renegotiation, the Department must decide if their financial circumstances allow payment renegotiation. If their financial circumstances warrant renegotiation, negotiate a new repayment agreement. If renegotiation is not feasible, continue renegotiation until a settlement is reached. Begin allotment reduction if a settlement is not reached. Notice is not required. (6-1-94)~~

~~03. **Household Fails To Respond To Notice.** If a Food Stamp household fails to respond to the notice by making the overdue payments or requesting renegotiation, reduce Food Stamp issuance. (6-1-94)~~

~~04. **Collection By Treasury Offset Program (TOP).** Past Due claims can be submitted for collection through TOP as specified in 7CFR 273.18 (n). The claim must meet the following criteria: (2-1-01)F~~

- ~~a. The claim is properly established. (7-1-97)~~
- ~~b. No person liable for the claim currently participates in a Food Stamp household. (7-1-97)~~
- ~~c. The claim is for at least thirty dollars (\$30). Multiple claims may be combined to total thirty dollars (\$30). (7-1-97)~~

d. ~~The date of the first demand letter is within ten (10) years of the quarterly TOP submission. There is no time limit on court judgments.~~ (2-1-01)F

e. ~~Voluntary or involuntary payments are one hundred eighty (180) days past due.~~ (2-1-01)F

~~05. **TOP Notices.** Sixty (60) days before referring claims for collection under TOP, the Department will provide the person with a notice of intent to collect via Treasury offset. The notice must inform the person of their right to request a Department review of the intended collection action. The request for review must be received within sixty (60) days of the notice of intent. The Department will determine if the claims in question are past due and legally enforceable based on a review of its records or other information submitted by the person. The Department will notify the person in writing if it is determined the claim is past due and legally enforceable and the Department intends to refer the claim to TOP. The notice of determination must inform the person of the right to request that FCS review the Department's decision. The notice must include instructions for requesting a review by FCS and the address of the FCS regional office.~~ (2-1-01)F

~~06. **TOP Effect On The Person.** When a claim is referred to TOP, any eligible Federal payment owed to the person may be intercepted, and applied to the claim to reduce the debt. The person may also be required to pay collection or processing fees charged by the Federal government to intercept the payment.~~ (2-1-01)F

~~714. **IPV REPAYMENT AMOUNTS.** IPV repayment factors are listed below:~~ (6-1-94)

~~01. **Repayment Amount.** The repayment amount is the greater of:~~ (6-1-94)

~~a. Twenty percent (20%) of the household's monthly Food Stamp amount, if they had not been disqualified.~~ (6-1-94)

~~b. Ten dollars (\$10) per month.~~ (6-1-94)

~~02. **Repayment Amount Adjusted Monthly.** The repayment amount is adjusted monthly as the Food Stamps increase or decrease.~~ (6-1-94)

~~03. **Installment Payments Not Adjusted Monthly.** The installment repayment agreement must specify monthly payments, not less than the allotment reduction amount. Once negotiated, monthly installments remain unchanged. The Department or household may renegotiate payments if the household's finances change.~~ (6-1-94)

~~04. **Full Repayment Within Three Years.** Restitution of a claim must be paid within three (3) years. The Department may compromise the claim amount to allow repayment within the three (3) years. The full amount, including compromises, must be used to offset benefits.~~ (6-1-94)

~~05. **Payment Not Withheld From First Month's Benefit.** The Food Stamp reduction must never be withheld from an initial month's benefits.~~ (6-1-94)

~~06. **Department Must Inform Household.** The Department must tell the household of the options of lump sum cash payment, coupon lump sum, installment cash, or coupons, or a combination of lump and installment repayments.~~ (7-1-98)

~~a. Tell the household the formula used for reducing the Food Stamp amount.~~ (7-1-98)

~~b. Tell the household the Food Stamp amount will be reduced unless the household repays by a lump sum cash or coupon return, or negotiates and repays under a repayment agreement.~~ (7-1-98)

~~e. Tell the household there is a ten dollar (\$10) minimum Food Stamp issuance for one (1) and two (2) person households. If the Department is collecting an overissuance by withholding, benefits cannot be reduced below a ten dollar (\$10) minimum for one (1) and two (2) person households.~~ (7-1-98)

**704. -- 714. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**721. CLAIMS ACCOUNTING PROCEDURES (RESERVED).**

*Regions must maintain a system to monitor claims. The system requirements are described below:* (6-1-94)

- 01. Claim Form.** *A completed claim form.* (6-1-94)
- 02. Restoration Of Benefits Accounting.** *An accounting of households entitled to restored benefits.* (6-1-94)
- 03. Households Who Fail To Respond.** *A record of households who have not responded to notices. A record of households who have not made installment payments.* (6-1-94)
- 04. Food Stamp Reduction Listings.** *A monthly updated listing of active Food Stamp reduction households.* (6-1-94)
- 05. Receipts.** *A record of receipts given or mailed to persons who paid. The receipt must contain the name, date, and amount received. The receipt must be retained in the claims record.* (6-1-94)
- 06. Automated File.** *An automated record containing case information, the claim amount, and amounts collected.* (6-1-94)
- 07. Record Of Collections Submitted.** *A record of amounts submitted to the Bureau of Financial Services.* (6-1-94)
- 08. Separate Accounting.** *Separate accounts for IPV, IHE, and AE claims.* (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**753. SPONSORED LEGAL NON-CITIZENS.**

Sponsored legal non-citizens are lawfully admitted for permanent United States residence, as defined in Sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act. A sponsor executes an affidavit of support or similar agreement on behalf of legal non-citizen, as a condition of the legal non-citizen's entry or admission into the United States as a permanent resident. *Treatment of a sponsor's income and resources is based on the type of affidavit of support the sponsor signed. Types of affidavits of support are listed in Table 753.* (7-1-98)

**01. Affidavit Signed Between February 1, 1983 And December 18, 1997.** *Income and resources of a sponsor who signed this affidavit of support will have some of their income and resources counted for the sponsored legal non-citizens. The income and resources of the sponsor will be deemed for three (3) years after the legal non-citizen is admitted for permanent residence to the U.S.* (7-1-99)

**02. Affidavit Signed On Or After December 19, 1997.** *A sponsor who signed an affidavit of support after December 19, 1997, pursuant to Section 213A of the Immigration and Nationality Act, will have all of their income and resources counted for the sponsored legal non-citizen. The income and resources of the sponsor will be deemed until the legal non-citizen becomes a naturalized citizen or until he has worked forty (40) qualifying quarters of coverage under Title II of the Social Security Act, or the sponsor dies. A qualifying quarter includes a quarter worked by the legal non-citizen's parent while the legal non-citizen was under eighteen (18) and a quarter worked by the legal non-citizen's spouse during marriage if the legal non-citizen remains married to the spouse or the spouse is deceased. Any quarter after January 1, 1997 in which a legal non-citizen received any Federal means-tested benefit is*

not counted as a qualifying quarter.

~~(7-1-99)~~(6-1-01)T

**754. DEEMING INCOME AND RESOURCES TO SPONSORED LEGAL NON-CITIZEN.**

Income and resources of the sponsor are deemed available to the legal non-citizen. If the sponsor lives with his spouse, the spouse's income and resources are also deemed available to the legal non-citizen. The income and resources are deemed, even if the sponsor and spouse were married after the sponsor signed the sponsorship agreement. The Department counts income and resources deemed to the legal non-citizen ~~must be counted~~ toward Food Stamp eligibility and issuance level of the legal non-citizen's household. Subsections ~~754.01 describes and 754.02 of these rules list the steps for deeming income and resources from a sponsor who signed an affidavit of support between February 1, 1983 and December 18, 1997. Subsection 754.02 describes the steps for deeming resources from a sponsor who signed an affidavit of support between February 1, 1983 and December 18, 1997. Subsection 754.03 describes the steps for deeming income from a sponsor who signed an affidavit of support on or after December 19, 1997. Subsection 754.04 describes the steps for deeming resources from a sponsor who signed an affidavit of support on or after December 19, 1997~~ to the legal non-citizen.

~~(7-1-99)~~(6-1-01)T

**01. Deeming Income From A Sponsor Who Signed An Affidavit Of Support ~~Between February 1, 1983 And December 18, 1997.~~**

~~(7-1-99)~~(6-1-01)T

a. Step 1. Compute the total monthly income of the sponsor and spouse when the legal non-citizen applies or is recertified. If the legal non-citizen has already reported under TAFI sponsored legal non-citizen rules use the TAFI reported gross income information. (7-1-98)

b. Step 2. Subtract the twenty percent (20%) earned income deduction from the earned income of the sponsor and spouse. ~~(6-1-94)~~(6-1-01)T

c. Step 3. Compute the sponsor's household size. Count the sponsor, the spouse and persons claimed by them as dependents for Federal income tax. (6-1-94)

d. Step 4. Find the Food Stamp gross monthly income limit for the sponsor's household size. The household size includes the sponsor, his spouse, and any dependents claimable by the sponsor for Federal income tax purposes. ~~(6-1-94)~~(6-1-01)T

e. Step 5. Subtract the Food Stamp gross monthly income limit for the sponsor's household from the remainder in Step 2. (6-1-94)

f. Step 6. The income remaining after Step 5 is deemed to the legal non-citizen household. (7-1-98)

g. Step 7. The sponsor may actually pay the legal non-citizen more income than deemed in Step 6. Any income the sponsor pays the legal non-citizen, exceeding the income deemed in Step 6, is also counted for Food Stamps. (7-1-98)

h. Step 8. If the legal non-citizen can verify his sponsor sponsors other legal non-citizens, divide the deemed income by the number of legal non-citizens applying for or getting Food Stamps. Deem all income and resources to the legal non-citizen until verification is provided. (7-1-98)

**02. Deeming Resources From A Sponsor Who Signed An Affidavit Of Support ~~Between February 1, 1983 And December 18, 1997.~~**

~~(7-1-99)~~(6-1-01)T

a. Step 1. Compute the resources of the sponsor and his spouse. Use the TAFI reported resource information if the legal non-citizen has already reported under TAFI sponsored legal non-citizen rules. (7-1-98)

b. Step 2. Subtract ~~two~~ one thousand five hundred dollars (\$~~21,0~~500) from the total resources of the sponsor and spouse computed in Step 1. ~~(6-1-94)~~(6-1-01)T

c. Step 3. The resources remaining after Step 2 are deemed to the legal non-citizen household. (7-1-98)

d. Step 4. If the legal non-citizen can verify his sponsor sponsors other legal non-citizens, divide the deemed resources by the number of legal non-citizens applying for or getting Food Stamps. Deem all income and resources to the legal non-citizen until verification is provided. (7-1-98)

~~03. Deeming Income From A Sponsor Who Signed An Affidavit Of Support On Or After December 19, 1997. (7-1-99)~~

~~a. Step 1. Compute the total month income of the sponsor and the spouse if living with the sponsor when the legal non-citizen applies or is recertified. (7-1-99)~~

~~b. Step 2. Subtract the earned income deduction from the earned income of the sponsor and spouse. (7-1-98)~~

~~c. Step 3. The income remaining after Step 2 is deemed to the legal non-citizen household. (7-1-98)~~

~~d. Step 4. The sponsor may actually pay the legal non-citizen more income than deemed in Step 3. Any income the sponsor pays the legal non-citizen exceeding the income deemed in Step 3 is also counted for Food Stamps. (7-1-98)~~

~~e. Step 5. If the legal non-citizen can verify his sponsor sponsors other legal non-citizens, divide the deemed income by the number of legal non-citizens applying for or getting Food Stamps. Deem all income and resources to the legal non-citizen until verification is provided. (7-1-98)~~

~~04. Deeming Resources From A Sponsor Who Signed An Affidavit Of Support On Or After December 19, 1997. (7-1-99)~~

~~a. Step 1. Compute the resources of the sponsor and his spouse if living with the sponsor. (7-1-99)~~

~~b. Step 2. The resources computed in Step 1 are deemed to the legal non-citizen household. (7-1-98)~~

~~c. Step 3. If the legal non-citizen can verify his sponsor sponsors other legal non-citizens, divide the deemed resources by the number of legal non-citizens applying for or getting Food Stamps. Deem all income and resources to the legal non-citizen until verification is provided. (7-1-98)~~

**755. DEEMING INCOME AND RESOURCES FROM A LEGAL NON-CITIZEN'S NEW SPONSOR.**

If the legal non-citizen reports a change in sponsors, the Department computes the deemed income and resources again, using information from the new sponsor. *The method of deeming used depends on the type of affidavit signed by the sponsor.* The Department deems the new sponsor's income and resources *will be deemed* for the remainder of the period specified in Section 753. (7-1-98)(6-1-01)T

**756. EXCEPTIONS TO SPONSOR DEEMING.**

Exceptions to sponsor deeming are listed in Subsections 756.01 through 756.043. (7-1-99)(6-1-01)T

~~01. Legal Non-Citizen Whose Sponsor Signed An Affidavit Of Support Between February 1, 1983 And December 18, 1997. A legal non-citizen whose sponsor signed an affidavit of support between February 1, 1983 and December 18, 1997 is exempt from deeming if: (7-1-99)~~

~~a. The legal non-citizen is a member of the sponsor's Food Stamp household. (7-1-99)~~

~~b. The sponsor has a separate Food Stamp household and the legal non-citizen is a member of another Food Stamp household. (7-1-99)~~

~~c. The legal non-citizen is sponsored by an organization or group. (7-1-99)~~

~~d. The legal non-citizen is not required to have a sponsor under the Immigration and Nationality Act. This includes a refugee, asylee, deportee, parolee or Cuban or Haitian entrant. (7-1-99)~~

**021. Legal Non-Citizen Whose Sponsor Signed An Affidavit Of Support ~~On Or After December 19, 1997~~.** A legal non-citizen whose sponsor signed an affidavit of support ~~on or after December 19, 1997~~ is exempt from deeming if: ~~(7-1-99)(6-1-01)T~~

- a. The legal non-citizen is a member of the sponsor's Food Stamp household. (7-1-99)
- b. The legal non-citizen is sponsored by an organization or group. (7-1-99)
- c. The legal non-citizen is not required to have a sponsor under the Immigration and Nationality Act. This includes a refugee, asylee, deportee, parolee or Cuban or Haitian entrant. (7-1-99)

**032. Battered Legal Non-Citizen Whose Sponsor Signed An Affidavit Of Support ~~On Or After December 19, 1997~~.** For sponsor deeming, a battered legal non-citizen includes the non-citizen and the child of the non-citizen. The non-citizen or child must be battered in the U.S. by a spouse, parent, or member of the family in the same household. The non-citizen must not participate in, or acquiesce to, the battering of the child. ~~(7-1-99)(6-1-01)T~~

- a. A battered legal non-citizen whose sponsor signed an affidavit of support ~~on or after December 19, 1997~~ is exempt from the sponsor deeming requirement for one (1) year, if the need for Food Stamps is connected to the battery and the legal non-citizen no longer lives with the batterer. ~~(7-1-99)(6-1-01)T~~
- b. The exemption from the sponsor deeming requirement can exceed more than one (1) year if the legal non-citizen demonstrates the battery has been recognized in an order of a judge or by the INS and the need for Food Stamps is connected to the battery. (7-1-99)

**043. Indigent Legal Non-Citizen Whose Sponsor Signed An Affidavit Of Support ~~On Or After December 19, 1997~~.** A non-citizen is indigent if the Department determines he is unable to obtain food and shelter without receiving Food Stamps. For an indigent non-citizen, the Department counts only the income and resources actually provided by the sponsor and spouse who signed an affidavit of support ~~on or after December 19, 1997~~. Only actual income and resources are counted for one (1) year after the indigent determination is made. ~~(7-1-99)(6-1-01)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**775. FOOD STAMPS FOR HOUSEHOLDS WITH IPV MEMBERS, INELIGIBLE FUGITIVE FELON, PROBATION/PAROLE VIOLATOR, WORK REQUIREMENT SANCTIONS, OR A MEMBER CONVICTED OF A CONTROLLED SUBSTANCE-RELATED FELONY.**

The Department computes Food Stamp eligibility and benefit level for households containing members disqualified for an IPV, ineligible fugitive felon, probation/parole violator, members ineligible because of work requirement sanctions including JSAP, and Voluntary Quit, or a member ineligible because of a controlled substance-related felony ~~must be computed~~ using the steps in Subsections 775.01 through 775.08. The household's Food Stamps must not increase because a household member is disqualified for IPV. ~~(3-30-01)(8-1-01)T~~

**01. Step 1.** Count all resources of the ~~disqualified IPV, ineligible fugitive felon, probation/parole violator, or ineligible controlled substance felon~~ members as resources to the household. ~~(3-30-01)(8-1-01)T~~

**02. Step 2.** Do not count the ~~IPV, ineligible fugitive felon, probation/parole violator, or ineligible controlled substance convicted felon~~ member as part of the household to compute the resource limit. ~~(3-30-01)(8-1-01)T~~

**03. Step 3.** Count all income of the ~~IPV, ineligible fugitive felon, probation/parole violator, or ineligible controlled substance convicted felon~~ members as income to the household. ~~(3-30-01)(8-1-01)T~~

**04. Step 4.** Do not count the ~~IPV, ineligible fugitive felon, probation/parole violator, or ineligible controlled substance convicted felon~~ member when computing household size for the gross and net income limit tests. ~~(3-30-01)(8-1-01)T~~

~~05. Step 5. Apply the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions apply to the remaining household members. (7-1-98)(8-1-01)T~~

~~06. Step 6. Count the IPV, ineligible ~~fugitive felon, probation/parole violator, or ineligible controlled substance convicted felon~~ member to compute the medical deduction. (3-30-01)(8-1-01)T~~

~~07. Step 7. Count the IPV, ineligible ~~fugitive felon, probation/parole violator, or ineligible controlled substance convicted felon~~ member to compute uncapped shelter deduction. (3-30-01)(8-1-01)T~~

~~08. Step 8. Do not count the IPV, ineligible ~~fugitive felon, probation/parole violator, or ineligible controlled substance convicted felon~~ member to compute household size for Food Stamp issuance. (3-30-01)(8-1-01)T~~

~~**776. HOUSEHOLD MEMBER DISQUALIFIED FOR JSAP, WORK REGISTRATION REQUIREMENTS, VOLUNTARY QUIT OR REDUCTION OF WORK (RESERVED).**~~

~~Food Stamp eligibility and benefit level for households containing members disqualified for failure to comply with JSAP, work registration requirements, voluntary quit or reduction of work must be computed using steps in Subsections 776.01 through 776.08. (4-5-00)~~

~~01. Step 1. Count all resources of the disqualified members as resources to the household. (6-1-94)~~

~~02. Step 2. Do not count the disqualified member as part of the household to compute the resource limit. (6-1-94)~~

~~03. Step 3. Count all income of the disqualified members as income to the household. (6-1-94)~~

~~04. Step 4. Do not count the disqualified member when computing household size for the gross and net income limit tests. (6-1-94)~~

~~05. Step 5. The entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions apply to the remaining household members. (7-1-97)~~

~~06. Step 6. Count the disqualified member to compute medical deduction. (6-1-94)~~

~~07. Step 7. Count the disqualified member to compute uncapped shelter deduction. (6-1-94)~~

~~08. Step 8. Do not count the disqualified member to compute household size for Food Stamp issuance. (6-1-94)~~

~~**777. MEMBER DISQUALIFIED FOR FAILURE OR REFUSAL TO PROVIDE A SSN, CHILD SUPPORT, CITIZENSHIP OR ALIENAGE, AND ABAWDs.**~~

~~Food Stamp eligibility and benefit level for households containing members disqualified for failure or refusal to provide a SSN, or for failure to cooperate with child support, failure to sign a citizenship or legal non-citizen status declaration, or reaching the ABAWD time limit must be computed using steps in Subsections 777.01 through 777.09. (7-1-98)(8-1-01)T~~

~~01. Step 1. Count the resources of the disqualified members as resources to the Food Stamp household. (6-1-94)~~

~~02. Step 2. Count part of the income of the disqualified members as income to the household. (6-1-94)~~

~~a. Subtract Food Stamp exclusions from the disqualified member's income. (6-1-94)~~

~~b. Divide the income evenly among all members, including the disqualified member. (6-1-94)~~

~~c. Count all but the disqualified member's share as income to the Food Stamp household. (6-1-94)~~

03. Step 3. Apply the earned income deduction to the prorated income of the excluded member. (6-1-94)
04. Step 4. Divide the allowable shelter, dependent care and child support expenses, paid by or billed to ~~the~~ disqualified member, among ~~the~~ all household members. Count ~~All~~ but the disqualified or ineligible member's share ~~is a deductible expense~~ as a deductible shelter, dependent care or child support expense for the remaining household members. If an ineligible alien is a member of the household, do not prorate the SUA. ~~(7-1-97)(8-1-01)T~~
05. Step 5. Do not count the disqualified member as part of the household to compute the resource limit. (6-1-94)
06. Step 6. Do not count the disqualified member when computing household size for the gross and net income limit tests. (6-1-94)
07. Step 7. Do not count the disqualified member to compute medical deduction. (7-1-98)
08. Step 8. Do not count the disqualified member to compute uncapped shelter deduction. (7-1-98)
09. Step 9. Do not count the disqualified member to compute household size for Food Stamp issuance. (6-1-94)

**~~778. FOOD STAMPS FOR HOUSEHOLDS WITH MEMBERS DISQUALIFIED FOR FAILURE TO MEET THE ABAWD WORK REQUIREMENT, FOR CITIZEN OR LEGAL NON-CITIZEN STATUS OR FOR FAILURE TO COOPERATE IN ESTABLISHING PATERNITY AND OBTAINING SUPPORT.~~**

~~Food Stamp eligibility and benefit level for households containing disqualified members must be computed using the steps in Table 778 if the member fails to meet the ABAWD work requirement, to cooperate in establishing paternity and obtaining support, or because the member is an ineligible legal non-citizen.~~ (7-1-98)

- ~~01. Step 1. Count all resources of the disqualified members as resources to the household. (7-1-98)~~
- ~~02. Step 2. Do not count the disqualified member as a part of the household to compute the resource limit. (7-1-98)~~
- ~~03. Step 3. Count all income of the disqualified members as income to the household. (7-1-98)~~
- ~~04. Step 4. Do no count the disqualified member when computing household size for the gross and net income limit tests. (7-1-98)~~
- ~~05. Step 5. The entire household's allowable earned income, standard, medical, dependent care, child support and excess shelter deductions apply to the remaining household members. (7-1-98)~~
- ~~06. Step 6. Count the disqualified member to compute the medical deduction. (7-1-98)~~
- ~~07. Step 7. Count the disqualified member to compute uncapped shelter deduction. (7-1-98)~~
- ~~08. Step 8. Do not count the disqualified member to compute the household size for Food Stamps. (7-1-98)~~

~~779~~. -- 780. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**788. INCOME AND RESOURCES OF NONHOUSEHOLD MEMBERS.**

Nonhousehold members of a Food Stamp household cannot get Food Stamps. Nonhousehold members are not

counted for Food Stamp issuance or eligibility. Nonhousehold members include students, roomers, and live-in attendants. Income and resources of nonhousehold members are not considered available to the Food Stamp household. Actions the Department must take regarding nonhousehold members are listed below: (6-1-94)

**01. Cash Payments.** Cash payments from the nonhousehold member to the household are counted as income. (6-1-94)

**02. Vendor Payments.** Vendor payments from a nonhousehold member are not counted as income. (6-1-94)

**03. Shared Deductible Expenses.** If the household shares deductible expenses with the nonhousehold member, subtract the amount actually paid by the household as an expense. If the payment cannot be distinguished, prorate the expenses among the persons paying and subtract only the household's prorated share. Do not prorate the SUA, if all persons sharing utility expenses with the Food Stamp household are excluded from the household only because they are Food Stamp ineligible. Allow the Food Stamp household the entire SUA. ~~(6-1-94)~~(8-1-01)T

**04. Shared Income.** When the earned income of the household and the nonhousehold member is combined, household income must be determined. (6-1-94)

- a. If the household's share can be identified, count the household's portion as earned income. (6-1-94)
- b. If the household's share cannot be identified, prorate the earned income among all persons with earned income. Then count the prorated share as earned income for the household. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**795. RESIDENTS OF GROUP LIVING ARRANGEMENTS.**

Disabled or blind residents of public or private non-profit group living arrangements, serving no more than sixteen (16) residents may get Food Stamps. Residents get Food Stamps under the same standards as other households. Group living arrangements rules are listed below: (6-1-94)

**01. FCS Authorized Retailer Or Department Certified.** The center must be an FCS authorized retailer or be certified by the Department as a non-profit group living center. Center status must comply with Section 1616(e) of the Social Security Act or comparable standards of the Secretary of USDA. (6-1-94)

**02. List Of Residents.** Each center must give the Field Office a list of current Food Stamp residents. The list must include a statement, signed by a center official, attesting the validity of the list. The Department must require the list on a periodic basis. The Department must conduct random on-site visits to assure the accuracy of the list. (6-1-94)

**03. Application Option.** Residents may apply on their own. Residents may apply as a group. Residents may apply through an authorized representative employed and designated by the center. Residents may apply through an authorized representative of the resident's choice. (6-1-94)

**04. Residents Apply On Their Own Behalf.** A person or a group of residents making up a household can apply on their own behalf. The center must determine the resident is physically and mentally capable of handling his own affairs. If the resident is eligible the center does not act as the authorized representative. The resident or group is responsible for reporting any changes affecting eligibility or benefit level. The resident is responsible for overissuances. (6-1-94)

**05. Certification.** Residents of a center applying through the center's authorized representative must be certified as a one (1) person household. Residents of a center applying on their own behalf must be certified according to household size. (6-1-94)

**06. Benefit Level.** Eligibility and benefit levels are based on the income and resources of the household. (6-1-94)

**07. Exempt From Work Registration.** Residents are exempt from work registration. (6-1-94)

**08. Notices.** Residents are entitled to notices of adverse action. If a group living arrangement center loses its authorization or certification notice is not required. (6-1-94)

**09. Using Food Stamps.** The Food Stamps may be used by the resident, a group of residents, or by the center to purchase food for the resident. The center may accept coupons as payment for meals. If residents purchase or prepare food for home consumption, the center must insure each resident's coupons are used for meals intended for that resident. (6-1-94)

**10. Penalties And Disqualifications.** The center can be penalized or disqualified if Food Stamps are misappropriated or used for purchases not contributing to the household. The misuse may be determined administratively or judicially. The Department must promptly notify FCS if it believes a center is misusing Food Stamps. The Department must not take action before FCS makes a determination. If FCS disqualifies a center as a retailer, the Department must suspend the center's authorized representative status for the same period. If the center loses FCS authorization to accept and redeem Food Stamps or is no longer authorized by the Department, its residents are no longer eligible for Food Stamps. The residents are not entitled to notice of adverse action. (7-1-98)

**11. Authorized Representative Liability.** Authorized representatives assigned by a group living arrangement shall be liable for an over issuance, if they give false information. (8-1-01)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0101**

**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224(5)(a) and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), 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 is being adopted as proposed. The original text of the proposed rule was published in the June 6, 2001 Administrative Bulletin, Volume 01-6, Pages 40 through 43.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary or proposed rule, contact Jean Christensen at (208) 364-1828.

DATED this 3rd day of July, 2001.

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) 332-7347 fax

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**IDAPA 16**  
**TITLE 03**  
**Chapter 09**

**RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

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

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-6, June 6, 2001, pages 40 through 43.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0102**

**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224(5)(a) and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), 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 is being adopted as proposed. The original text of the proposed rule was published in the June 6, 2001 Administrative Bulletin, Volume 01-6, Pages 44 through 45.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary or proposed rule, contact Lloyd Forbes at (208) 334-5795.

DATED this 3rd day of July, 2001.

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) 332-7347 fax

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**IDAPA 16**  
**TITLE 03**  
**Chapter 09**

**RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

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

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-6, June 6, 2001, pages 44 through 45.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0103**

**NOTICE OF TEMPORARY RULEMAKING**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2001.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b); 56-203(g), (i), (j); 56-1003(1); 56-1004(l) (a), (e); and 56-1005(8), Idaho Code.

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

**September 17, 2001, at 6:30 p.m. to 9:00 p.m.**  
**Department of Health and Welfare, Conference Room**  
**3402 Franklin Road, Caldwell, Idaho**

**September 17, 2001, at 6:30 p.m. to 9:00 p.m.**  
**Department of Health and Welfare, Suite D-119**  
**1720 Westgate Drive, Boise, Idaho**

**September 18, 2001, at 6:30 p.m. to 9:00 p.m.**  
**Coeur d'Alene Inn**  
**414 W. Appleway Avenue, Coeur d'Alene, Idaho**

**September 18, 2001, at 6:30 p.m. to 9:00 p.m.**  
**Red Lion Port 7, Seaport Club**  
**21st Street, Lewiston, Idaho**

**September 19, 2001, at 6:30 p.m. to 9:00 p.m.**  
**Department of Health and Welfare, Conference Room**  
**601 Pole Line Rd., Twin Falls, Idaho**

**September 19, 2001, at 6:30 p.m. to 9:00 p.m.**  
**Holiday Inn, 1399 Bench Rd., Pocatello, Idaho**

**September 20, 2001, at 6:30 p.m. to 9:00 p.m.**  
**Department of Health and Welfare, Conference Room**  
**150 Shoup Avenue, Suite 19, Idaho Falls, Idaho**

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

**DESCRIPTIVE SUMMARY:** The Department is piloting a utilization management program for developmental disabilities services. If approved by the 2002 Legislature, the changes will be implemented across the state.

Temporary rules were adopted on July 23, 2001 and amended on August 17, 2001 in response to public comment. The changes made by the amended temporary rule appear in italics, and include both deletions and additional language. Since the text of the original temporary Utilization Management rules is new language, it appears underlined. Some of that new language is being struck in the amendment of the temporary rule, and so will also show as a strikethrough.

These rule changes for Developmental Disabilities Agencies (DDA), Targeted Services Coordination (TSC), and Developmental Disabilities waiver services incorporate Utilization Management rules in IDAPA 16.03.09, Sections 824 through 853. The development of Utilization Management Rules in IDAPA 16.03.09, Sections 824 through 853 allows the Department to implement a pilot program in Region II.

The amendments to the temporary rule delete "update" from Subsection 119.01.b.; clarify who can perform assessments in Section 826; clarify the assessment process for authorization of a consumer budget in Section 828; delete Section 835 regarding the range of available support; provide exceptions for certain services from the requirement for provider implementation plans in Section 839; correct language in Sections 119, 120.07, 142, 825, and 826; and expand the number of issues that may be referred to the Medicaid ombudsman in Section 853.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(l)(b) and 67-5226(l)(c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons: For the protection of the public health, safety, welfare and to confer a benefit.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the April 4, 2001, Idaho Administrative Bulletin, Volume 01-4, on page 29. Per legislative intent, Quality Improvement Committees consisting of consumer/families, advocates, providers and State staff were involved. There have been many opportunities for review of draft rules by the Quality Improvement Committees through mailings and regularly scheduled meetings.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Jean Christensen at (208) 364-1828.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 26, 2001.

DATED this 17th day of August, 2001.

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) 332-7347 fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0103**

**119. ~~(RESERVED)~~ TARGETED DEVELOPMENTAL DISABILITIES SERVICE COORDINATION PILOT PROJECT.**

For the purpose of the pilot, access to these Targeted Service Coordination services during a pilot program shall be authorized through the Department's Utilization Management process in Sections 824 through 853. Those participants who are not part of the pilot shall continue to use requirements of Section 118 of these rules. The Department or its designee shall ~~do authorization for~~ authorize all services. All providers of waiver service must have a pilot amendment to their current provider agreement. Changes to the Targeted Service Coordinator rules are:

(10-1-01)T

**01. Service Description.** Targeted Service Coordination (TSC) shall be delivered by eligible providers to assist the Medicaid recipient to obtain and coordinate needed health, educational, vocational, residential, and social services using the least restrictive and most appropriate procedures and settings. TSC may consist of one (1) or more of the core functions.

(10-1-01)T

a. Individual Assessment and Plan Development. The Individual Support Plan (ISP) shall be developed by the plan developer in conjunction with the recipient, and with the recipient's consent, the family and individuals significant to the recipient. (10-1-01)T

b. Monitoring. When chosen by the consumer, the service coordinator shall review, ~~update~~, and monitor the plan continuously to meet the recipient's changing needs. The ISP team will determine frequency of monitoring, which shall be no longer than ninety (90) days. (10-1-01)T

**02. Payment For Services.** Medicaid shall only reimburse for core services in Subsection 118.02 of these rules provided to members of the eligible target group by qualified staff. Medicaid shall reimburse for the following services either alone or in combination: (10-1-01)T

a. Plan development on an hourly basis. (10-1-01)T

b. Plan development and monitoring on an hourly basis. (10-1-01)T

c. Service coordination including monitoring on a monthly basis. (10-1-01)T

**120. REHABILITATIVE SERVICES -- DEVELOPMENTAL DISABILITIES AGENCIES.**

The Department will pay for rehabilitative services pursuant to 42 CFR 440.130(d), including medical or remedial services provided by facilities which have entered into a provider agreement with the Department and are licensed as developmental disabilities agencies by the Division of Family and Community Services, Bureau of Developmental Disabilities. Effective July 1, 1995, all recipients not currently receiving services from a Developmental Disabilities Agency shall do so only as part of an Individual Support Plan (ISP) developed by the client and his targeted service coordinator, if one is selected. If the client chooses not to select a targeted service coordinator, the Developmental Disabilities Agency (DDA) must ensure an Individual Program Plan is developed. Clients who are Home and Community Based Services Waiver recipients who want and need DDA services shall develop an ISP with their targeted service coordinator and submit that plan to the Regional ACCESS Unit for authorization. Educational services, other than those "related services" found in 34 CFR 300.13 and provided to all eligibles under the State Medical Plan, are the responsibility of the public schools and are not eligible for Medicaid payments. Covered "related services" include: audiology; psychotherapy services; physician services; developmental and occupational therapy; physical therapy; speech pathology and transportation necessary to obtain other covered services. (3-30-01)

**01. Evaluation And Diagnostic Services.** Prior to delivery of service, current and accurate comprehensive evaluations or specific skill assessment shall be completed or obtained as necessary to effectively plan the consumer's program. Evaluations and assessments shall reflect the current status of the consumer. (3-30-01)

a. When required medical/social, psychological, speech and hearing, physical, developmental, and occupational therapy evaluations must meet the requirements of IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," with the following exceptions: (3-30-01)

i. For children being served in a Developmental Disabilities Agency under Part C of IDEA (Individuals with Disabilities Education Act), the above evaluations must meet the requirements in Title 16, Chapter 1, Idaho Code, "Early Intervention Services" and the Idaho State Plan for Early services Intervention of the Individuals with Developmental Disabilities Education Act; or (3-30-01)

ii. For children being served in a Developmental Disabilities Agency under Part B of IDEA, the above evaluations must meet Section 33-201, Idaho Code, "School Age," and IDAPA 08.02.03, "Rules Governing Thoroughness". (3-30-01)

b. Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all evaluation or diagnostic services provided in any calendar year. (10-6-88)

**02. Treatment Services.** Home, community and center based services must be recommended by a physician or other practitioner of the healing arts and provided in accordance with objectives as specified in an ISP submitted to the Regional ACCESS Unit. (3-30-01)

a. The treatment services must meet the requirements of IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," with the following exceptions: (3-30-01)

i. For children being served in a Developmental Disabilities Agency under Part C of IDEA, treatment services must meet the requirements in Title 16, Chapter 01, Idaho Code, "Early Intervention Services" and the Idaho State Plan for Early Intervention of the Individuals with Developmental Disabilities Education Act; or (3-30-01)

ii. For children being served in a Developmental Disabilities Agency under Part B of IDEA, treatment services must meet Section 33-201, Idaho Code, "School Age," and IDAPA 08.02.03, "Rules Governing Thoroughness". (3-30-01)

b. Psychotherapy services limited to a maximum of forty-five (45) hours in a calendar year, and include: (7-1-95)

i. Individual psychotherapy; (7-1-95)

ii. Group psychotherapy; (7-1-95)

iii. Family-centered psychotherapy which must include the recipient and one (1) other family member at any given time. (7-1-95)

c. Speech and hearing therapy services are limited to two hundred fifty (250) treatment sessions per calendar year. (7-1-95)

d. Physical therapy services are limited in accordance with Section 140 of these rules. (3-30-01)

e. Developmental and occupational therapy services alone or in combination are limited to a maximum of thirty (30) hours per week. (3-30-01)

f. Collateral contact with individuals directly involved with the recipient of service to expand rehabilitative services into the client's living location. Such contacts will be included in the limitations of hours of treatment service reimbursed by Medicaid. Contacts with such persons for the purpose of future placement, interagency and intra-agency case monitoring, staffings and social service activities are not allowable for Medicaid payment. (10-6-88)

g. Intensive Behavioral Interventions are individualized, comprehensive, proven interventions used on a short term, one-to-one basis that produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. Intensive Behavioral Intervention is available only to children birth through age twenty-one (21) who have self-injurious, aggressive, or severely maladaptive behavior and severe deficits in the areas of verbal and non-verbal communication; or social interaction; or leisure and play skills. Intensive Behavioral Intervention alone or in combination with developmental and occupational therapy is limited to thirty (30) hours a week and may be delivered for no longer than thirty-six (36) months. (2-1-01)T

h. Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No therapy services will be reimbursed during periods when the recipient is being transported to and from the agency. (3-30-01)

**03. Optional Services.** (11-22-91)

a. Consultation for the purpose of prescribing, monitoring, and/or administering medications. These consultations shall be: (11-22-91)

i. Provided by a physician or licensed nurse practitioner in direct face-to-face contact with the client; and (11-22-91)

ii. Incorporated into the client's Individual Support Plan with the type, amount, and duration of the

service specified. (7-1-95)

b. Nursing services for the purpose of supervising, monitoring, and/or administering medication within the limits of the Nurse Practice Act, Section 54-1402(d), Idaho Code. These services shall be: (11-22-91)

i. Ordered and supervised by a physician; and (11-22-91)

ii. Provided by licensed and qualified nursing personnel in direct face-to-face contact with the client; and (11-22-91)

iii. Incorporated into the client's Individual Support Plan with the type, amount, and duration of the service specified. (7-1-95)

c. Psychiatric evaluations and services for the purpose of establishing a diagnosis, identifying client strengths and needs, and recommending and/or implementing interventions to address each need. These evaluations and services shall be: (11-22-91)

i. Conducted by a physician in direct face-to-face contact with the client; and (11-22-91)

ii. Incorporated into the client's Individual Support Plan with the type, amount, and duration of service specified. (7-1-95)

**04. Requirements For Agencies.** Agencies must be licensed as Developmental Disabilities Agencies by the Department. Loss of licensure by an agency will be cause for termination of all Medicaid program payment for services and termination of the agency's provider agreement. (3-30-01)

**05. Excluded Services.** The following services are excluded for Medicaid payments: (10-6-88)

a. Vocational services; and (10-6-88)

b. Educational services; and (10-6-88)

c. Recreational services. (10-6-88)

**06. Payment Procedures.** Payment for agency services must be in accordance with rates established by the Department. (3-30-01)

a. Providers of services must accept as payment in full the Department's payment for such services and must not bill a MA recipient for any portion of any charges. (11-10-81)

b. Third party payment resources, such as Medicare and private insurance, must be exhausted before the Department is billed for services provided to an eligible recipient. Proof of billing other third party payors is required. (11-10-81)

**07. Requirements For Pilot.** ~~The purpose of~~ For the pilot, access for these services shall be authorized through the Department's Utilization Management process in Sections 824 through 853. (10-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

~~141.—142.~~ (RESERVED).

**142. PILOT RULES FOR WAIVER SERVICES FOR ADULT DEVELOPMENTALLY DISABLED RECIPIENTS.**

Access to these services shall be authorized through the Department's Utilization Management process in Sections

824 through 853. Those participants who are not part of the pilot will continue to use the requirements in Section 143. The Department or its designee shall ~~do authorization for~~ authorize all services. All providers of waiver services must have a pilot amendment to their current provider agreement. (10-1-01)T

**01. Services Provided.** (10-1-01)T

a. Individual ~~A~~assessment and ~~P~~lan ~~D~~development. The Individual Support Plan (ISP) shall be developed by the plan developer in conjunction with the recipient and with the recipient's consent, the family and individuals significant to the recipient. The signature of the recipient or his legal guardian and the plan developer must be on all ISP's. (10-1-01)T

b. Implementation ~~P~~lan. All waiver providers shall develop an implementation plan according to Section 839. (10-1-01)T

**02. Service Supervision.** The ISP, which includes all waiver services, is monitored by the plan developer or Targeted Service Coordinator at a frequency no longer than ninety (90) days. (10-1-01)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**819. -- ~~995823.~~ (RESERVED).**

**824. UTILIZATION MANAGEMENT - PILOT PROJECT.**

The following temporary utilization management rules shall apply to a pilot project in Clearwater, Idaho, Latah, Nez Perce, and Lewis counties from October 1, 2001 through April 30, 2002, for adults who are developing initial or annual plans for developmental disabilities services. Further implementation is subject to approval by the Legislature. (10-1-01)T

**825. UTILIZATION MANAGEMENT.**

The purpose of utilization management for adults with developmental disabilities is to assure the provision of the right services at the right time, in the right setting, and in the most cost-effective manner to enhance greater health and safety, and to promote consumers' rights, self-determination and independence. Utilization management involves assessment of the need for services, development of a consumer budget, development of a plan of service, prior authorization of services, and a quality improvement program. All Medicaid services available under these rules for the Developmental Disabilities and Idaho State School and Hospital waivers at Section 143, developmental disabilities agencies at Section 120, and targeted services coordination at Section 118 of these rules are subject to utilization management. Services are reimbursable if they are consistent with the authorized plan of service, the purpose and rules of utilization management, other requirements of these ~~Medicaid~~ rules, IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," and IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (10-1-01)T

**826. UTILIZATION MANAGEMENT - DETERMINATION OF PROGRAM ELIGIBILITY.**

Initial and annual assessments shall be performed by an ~~independent~~ organization ~~that shall have~~ or individuals with no financial interest in the provision of services. The purpose of the assessment shall be to determine a consumer's eligibility for developmental disabilities services according to Section 66-402(4), Idaho Code; ICF/MR level of care for waiver services according to Sections 610 through 662 of these rules; and the consumer budget provided by the Department defined in ~~Subsections 826.01 and 826.02~~ 828. Evaluations or assessments required for determining developmental disabilities eligibility shall include a medical-social history and a functional assessment. Psychometric testing shall be conducted for consumers whose eligibility is based on mental retardation if they have no prior testing or where testing may be inconclusive due to age or inability to respond. Documentation is required for consumers whose eligibility is based on developmental disabilities other than mental retardation. The assessor shall complete the Scales of Independent Behavior - Revised (SIB-R) needed for determining ICF/MR level of care and consumer budget in face-to-face meetings with the person who best knows the consumer, validated by observation and documentation. With the consent of the consumer, the assessor shall contact family, individuals who are significant to the consumer, and any service provider, to provide data necessary for the completion of the assessment tools.

(10-1-01)T

**01. Initial Assessment.** For new applicants, an assessment shall be completed within twenty-eight (28) days from the date an application is submitted. Assessments shall also be completed for current consumers when utilization management is implemented for them, at the time of their annual determination of the need for continued service. The assessor shall evaluate whether assessments are current and accurately describe the status of the consumer. The results of the assessment shall be provided to the consumer within fourteen (14) days. (10-1-01)T

**02. Notice Of Annual Review.** The assessor shall notify the consumer and plan developer at least ninety (90) days before the expiration of the current plan of service. (10-1-01)T

**827. UTILIZATION MANAGEMENT - INFORMED CONSENT PROCESS.**

Unless the consumer has a guardian with appropriate authority, the consumer shall make decisions regarding utilization management. If the consumer has no guardian, or if the guardian is not readily available, targeted service coordination shall be provided unless the consumer opts not to receive that service. If a paid provider is the guardian, there shall be a targeted service coordinator who is not the guardian. During plan development and amendment, planning team members shall each indicate whether they believe the plan represents the consumer's choice. If not, the plan or amendment shall be referred to the Medicaid ombudsman to negotiate a resolution with all the members of the planning team. (10-1-01)T

**828. UTILIZATION MANAGEMENT - ASSESSMENT FOR CONSUMER BUDGET.**

~~The Assessment shall be based on the SIB-R; consist of a combination of a physician's history and physical; the average cost of the consumer's services for the past three (3) years; social and developmental history; skill level as determined by the SIB-R; and the consumer's medical conditions, risk of deterioration, living conditions, individual goals, or and behavioral or psychiatric need that require special consideration. The assessor shall evaluate this information to determine whether the consumer's average three (3) year cost accurately reflects the consumer's needs. These factors shall be compared to the person's service needs and costs for the previous three-year period, if available. Based on all of this information, Aa consumer budget appropriate to the consumer's identified needs shall be negotiated with the consumer and shall be authorized by the Department or designee if that budget is within the range of available support associated with the consumer's SIB-R score, and is supported by the assessment.~~ (10-1-01)T

**01. Physician's History And Physical.** The history and physical shall include the physician's referral for nursing services under the waivers and for developmental disabilities agencies services, if they are anticipated to be part of the plan of service. For consumers in Healthy Connections, the Healthy Connections physician shall conduct the history and physical, and may refer the consumer for evaluation and for services, if indicated by the evaluation, to the Department or designee. A physician's history and physical is required within the year prior to the initiation of service and thereafter on a frequency determined by the physician, except that certified family home rules require a history and physical within six (6) months prior to admission. (10-1-01)T

**02. SIB-R.** A current SIB-R shall be evaluated at the initiation of service and shall be reviewed annually to assure it continues to reflect the functional status of the consumer. (10-1-01)T

**829. -- 8345. (RESERVED).**

~~**835. UTILIZATION MANAGEMENT - RANGE OF AVAILABLE SUPPORT.**~~

~~Consumers shall choose services that meet their assessed needs within available Medicaid resources and consumer budget. The Department shall review the need for additional support when the consumer's request is above or below the consumer budget identified by the assessment, or the requested services do not correlate with the assessment. The range of available support associated with SIB-R scores is:~~ (10-1-01)T

~~**01. Infrequent Or None.** For consumers with SIB-R scores between eighty five (85) and one hundred (100), between twelve thousand eight hundred and fifty three dollars (\$12,853) and seventeen thousand five hundred and eight dollars (\$17,508).~~ (10-1-01)T

~~**02. Intermittent.** For consumers with SIB-R scores between seventy (70) and eighty four (84), between thirteen thousand one hundred and twenty six dollars (\$13,126) and twenty thousand seven hundred and eighty four~~

~~dollars (\$20,784).~~

~~(10-1-01)T~~

~~**03. Limited.** For consumers with SIB-R scores between fifty five (55) and sixty nine (69), between thirty thousand three hundred and eighty three dollars (\$30,383) and forty two thousand four hundred and forty five dollars (\$42,445).~~

~~(10-1-01)T~~

~~**04. Frequent.** For consumers with SIB-R scores between forty (40) and fifty four (54), between thirty thousand seven hundred and seventy two dollars (\$30,772) and forty four thousand two hundred and fifty nine dollars (\$44,259).~~

~~(10-1-01)T~~

~~**05. Extensive.** For consumers with SIB-R scores between twenty five (25) and thirty nine (39), between twenty eight thousand seven hundred and sixty five dollars (\$28,765) and forty one thousand and thirty one dollars (\$41,031).~~

~~(10-1-01)T~~

~~**06. Pervasive.** For consumers with SIB-R scores between one (1) and twenty four (24), between thirty three thousand three hundred and ninety dollars (\$33,390) and forty three thousand nine hundred and fifty eight dollars (\$43,958).~~

~~(10-1-01)T~~

**836. UTILIZATION MANAGEMENT - PLAN OF SERVICE.**

The Department or designee shall assure that the consumer identifies a person who shall be responsible for developing one (1) plan of service that covers all services and supports, based on a person-centered planning process. The plan of service is also called the Individual Support Plan elsewhere in the Department's rules. A provider of direct service, the assessor, and anyone associated with the assessor organization may not be the chosen plan developer. Family members and others who wish to be paid for plan development shall be targeted service coordinators as defined in Subsection 118.04 of these rules. The plan shall be developed with the consumer, and with the consumer's consent, the family and individuals who are significant to the consumer. In developing the plan of service, the plan developer and consumer shall identify services and supports available outside of Medicaid-funded services that can help the consumer meet desired goals. The targeted service coordinator or plan developer shall monitor the plan according to Subsection 118.02.d. of these rules, and the planning team shall identify the frequency of monitoring, which shall be at least every ninety (90) days. Unless delayed because of consumer unavailability, development of the consumer budget, and development of the plan of service shall be completed within twenty-eight (28) days after the date of assessment. Authorized services shall be delivered by providers who are selected by the consumer.

(10-1-01)T

**837. UTILIZATION MANAGEMENT - CONTENT OF PLAN OF SERVICE.**

In addition to any other requirements regarding Individual Support Plans, the plan of service shall identify the plan developer, measurable goals, the consumer budget, requested services and supports, the units or hours of service, and providers. The plan of service shall include activities geared to progress, maintenance or lack of regression.

(10-1-01)T

**838. UTILIZATION MANAGEMENT - SUBMISSION AND PRIOR AUTHORIZATION OF PLAN OF SERVICE.**

The plan of service shall be submitted for review and prior authorization to the Department or designee. The plan developer shall ensure that all services requiring authorization outside of utilization management shall be submitted to the appropriate unit of the Department. The Department or designee shall confirm that all prior authorizations are complete. If some or all of the plan of service is not initially approved, the Department or designee shall work with the consumer, planning team, and potential or current providers to develop an authorized plan of service. Services may be provided on the date a plan of service, or part of a plan, is authorized.

(10-1-01)T

**839. UTILIZATION MANAGEMENT - PROVIDER IMPLEMENTATION PLAN.**

Each provider of Medicaid services subject to utilization management shall develop an implementation plan, *which identifies with the exception of providers of specialized medical equipment, home delivered meals, environmental modifications, non-medical transportation, personal emergency response systems, respite care and chore services.* Implementation plans shall identify specific objectives that demonstrate how the provider will assist the consumer to meet the consumer's goals and needs identified in the plan of service. The implementation plan shall be completed within fourteen (14) days after the initial provision of service, and revised whenever consumer needs change. Implementation plans shall be provided to the individual who is monitoring the plan of service.

(10-1-01)T

**840. UTILIZATION MANAGEMENT - ADDENDUM OF PLAN OF SERVICE.**

A plan of service may be adjusted as necessary during the year based on changes in the consumer's need or demonstrated outcomes. Changes in the consumer budget inconsistent with the plan of service require updated assessments if clinically necessary. Adjustment of the consumer budget is subject to prior authorization by the Department or designee. (10-1-01)T

**841. UTILIZATION MANAGEMENT - COMMUNITY CRISIS SUPPORTS.**

Community crisis supports is intervention for consumers who are at risk of losing housing, employment or income, risk of incarceration, physical harm or family altercation, or other emergencies as defined by the consumer. Community crisis support may be authorized the following business day if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the consumer to the community. Community crisis support is limited to a maximum of four (4) hours per day for up to five (5) consecutive days. Community crisis support may be provided before or after the completion of the assessment and plan of service. The plan of service shall include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. The Department may also retroactively authorize interim services for which the consumer would otherwise be eligible in order to avoid a crisis, for up to seven (7) days while an initial plan or addendum is being developed. (10-1-01)T

**842. -- 849. (RESERVED).**

**850. UTILIZATION MANAGEMENT - REAUTHORIZATION OF PLAN.**

The plan developer shall notify providers of the annual review date and secure the providers' evaluation of the consumer's need for continued services and progress toward goals. The plan developer shall convene the planning team. For consumers who are re-applying for service after a lapse in service, the assessor shall evaluate whether assessments are current and accurately describe the status of the consumer. The assessor shall provide the results of the assessment to the consumer not later than fifty-six (56) days before the expiration of the current plan of service. A new plan of service shall be provided to the Department or designee at least twenty-eight (28) days prior to the expiration of the current plan. The Department or designee shall review and respond to the assessment and new plan of care within fourteen (14) days. Continued authorization of the prior plan of service may occur if delay in reauthorization is caused by the Department or designee. The plan shall be evaluated and prior authorized according to the requirements of the rules for the requested services and the purpose and rules of utilization management. The consumer budget and services may be adjusted based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. (10-1-01)T

**851. UTILIZATION MANAGEMENT - QUALITY IMPROVEMENT PROGRAM.**

The Department shall periodically review the services provided and shall review provider performance based on utilization management reports and other quality factors determined by the Department. Components of the quality improvement program include consumer satisfaction, health and safety, quality of life, outcomes monitoring, inter-rater reliability, utilization reporting, delegation oversight, concurrent review and quality assurance. The quality improvement program shall develop data regarding consumers' prior year outcomes and progress toward goals in order to determine if levels of support and services are beneficial to them. Providers shall report results of quarterly monitoring of outcomes and services to the plan monitor, who shall submit copies to the Department. The quality improvement program shall refer apparent fraud, abuse or substandard care for investigation. (10-1-01)T

**852. UTILIZATION MANAGEMENT - ADMINISTRATIVE REVIEW AND APPEALS.**

In the event of disagreement with Department action regarding Medicaid services subject to utilization management, consumers shall be offered an informal review. If the results of the review are unsatisfactory to the consumer, the consumer may file an appeal. Administrative review and appeals are subject to IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (10-1-01)T

**853. UTILIZATION MANAGEMENT - OMBUDSMAN.**

Consumer complaints about ~~the~~ assessments, eligibility determination, plan development, quality of service ~~shall~~ and other relevant concerns may be referred to the Medicaid ombudsman. (10-1-01)T

**854. -- 995. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0106**

**NOTICE OF TEMPORARY AND PROPOSED RULEMAKING**

**EFFECTIVE DATE:** These temporary rules are effective May 1, 2001.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

Dental procedure codes have been updated in the Idaho Medicaid Provider Handbook to reflect the 2001 American Dental Association codes. The Idaho Medicaid Provider Handbook has been re-incorporated into these rules due to the passage of SB 1301. Additionally, billing for pulp vitality tests, behavior management, and consultations has been clarified and limitations on panoramic x-rays has been added.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to confer a benefit.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. A Notice of Negotiated Rulemaking was not published as the negotiations were conducted with the Idaho State Dental Association only.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Lloyd Forbes at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before September 26, 2001.

DATED this 16th day of July, 2001.

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) 332-7347 fax

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0106**

~~125. DENTAL SERVICES: (Dental Services Is Being Moved And Rewritten In Section 900.)~~

~~01. Dental Services. Dental services are provided for the relief of dental pain, prosthetic replacement, and the correcting of handicapping malocclusion and are purchased from a licensed dentist or denturist. All Medicaid dental services, limitations on specific services, excluded services, billing codes and payment policies are stated in the Idaho Medicaid Provider Handbook, Section 3, Dental Guidelines, dated December 1, 1998, which are incorporated herein by this reference. A Medicaid dental consultant will review requests for prior authorization, with accompanying documentation, to determine approval or denial. (4-5-00)~~

~~02. Dentist Services, Payment, Covered Benefits, And Limitations. Referenced in Dental Guidelines, Introduction, Subsection Payment and Section Covered Benefits and Limitations, are all of the Medicaid dental benefits that may be provided by dentists. Within these headings are specific services, procedures, limitations, and exclusions: (4-5-00)~~

- ~~a. Customary Fees; (4-5-00)~~
- ~~b. Non-covered Services; (4-5-00)~~
- ~~c. Overview; (4-5-00)~~
- ~~d. Diagnostics Procedures; (4-5-00)~~
- ~~e. Preventive Procedures; (4-5-00)~~
- ~~f. Restorative Procedures; (4-5-00)~~
- ~~g. Endodontics; (4-5-00)~~
- ~~h. Periodontics; (4-5-00)~~
- ~~i. Removable Prosthodontics; (4-5-00)~~
- ~~j. Maxillofacial Prosthetics; (4-5-00)~~
- ~~k. Fixed Prosthodontics; (4-5-00)~~
- ~~l. Oral Surgery; (4-5-00)~~
- ~~m. Orthodontics; (4-5-00)~~
- ~~n. Adjunctive General Services; (4-5-00)~~
- ~~o. PWC Codes; (4-5-00)~~
- ~~p. Tooth Number Codes; and (4-5-00)~~
- ~~q. Tooth Surface Codes. (4-5-00)~~

~~03. Denturist Services, Payment, Covered Benefits, And Limitations. Referenced in Dental Guidelines, Denturist Policy Guidelines, Subsections Payment, Service Limitations and Procedure Codes, is a listing of all Medicaid denture and partial denture benefits that may be provided by denturists. Within these headings are the specific services, procedures, limitations and exclusions: (4-5-00)~~

- ~~a. Payment. (4-5-00)~~
- ~~b. Service Limitations. (4-5-00)~~

e. ~~Procedure Codes.~~ (4-5-00)

~~04. Idaho Medicaid Provider Handbook. The full text of the Idaho Medicaid Provider Handbook, section 3, Dental Guidelines may be obtained from the Idaho Department of Health and Welfare Division of Medicaid. A copy may be viewed at the Idaho State Supreme Court Law Library. (4-5-00)~~

~~126. (RESERVED).~~

~~127. DENTURIST SERVICES.~~

~~01. Payment. Payment will be available for the following specific procedures when provided by licensed denturists who are participating providers in the Medicaid Program. (3-1-92)~~

~~a. Complete denture, upper; (3-1-92)~~

~~b. Complete denture, lower; (3-1-92)~~

~~c. Immediate denture, upper; (3-1-92)~~

~~d. Immediate denture, lower; (3-1-92)~~

~~e. Adjust complete denture, upper; (3-1-92)~~

~~f. Adjust complete denture, lower; (3-1-92)~~

~~g. Adjust partial denture, upper; (3-1-92)~~

~~h. Adjust partial denture, lower; (3-1-92)~~

~~i. Repair broken complete denture base; (3-1-92)~~

~~j. Replace missing or broken teeth, complete denture (each tooth); (3-1-92)~~

~~k. Repair resin saddle or base; (3-1-92)~~

~~l. Repair cast framework; (3-1-92)~~

~~m. Repair or replace broken clasp; (3-1-92)~~

~~n. Repair broken teeth per tooth; (3-1-92)~~

~~o. Add tooth to existing partial denture; (3-1-92)~~

~~p. Add clasp to existing partial denture; (3-1-92)~~

~~q. Reline complete upper denture (chairside); (3-1-92)~~

~~r. Reline complete lower denture (chairside); (3-1-92)~~

~~s. Reline upper partial denture (chairside); (3-1-92)~~

~~t. Reline lower partial denture (chairside); (3-1-92)~~

~~u. Reline complete upper denture (laboratory); (3-1-92)~~

~~v. Reline complete lower denture (laboratory); (3-1-92)~~

- w. *Reline upper partial denture (laboratory);* (3-1-92)
  - x. *Reline lower partial denture (laboratory);* (3-1-92)
  - ~~02. **Denturist Services — Limitations.** *Denture construction is covered no more frequently than every five (5) years.* (3-1-92)~~
  - ~~03. **Payment Procedure.** (3-1-92)~~
    - a. *The Department will pay the lower of either the billed charge or the Department's maximum reimbursement rate (see Section 060).* (3-1-92)
    - b. *All claims must be submitted on the American Dental Association (ADA) claim form.* (3-1-92)
- 125. -- 127. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**819. -- ~~995899.~~ (RESERVED).**

**900. DENTAL SERVICES.**

**01. Dental Services Provided.** Dental services are provided for the relief of dental pain, prosthetic replacement, and the correcting of handicapping malocclusion and are purchased from a licensed dentist or denturist. A Medicaid dental consultant will review requests for prior authorization, with accompanying documentation, to determine approval or denial. (5-1-01)T

**02. Dental Covered Benefits And Limitations.** Dental services are covered by Medicaid with specific limitations and exclusions. Idaho uses the procedure codes contained in the most recent Current Dental Terminology (CDT) handbook published by the American Dental Association. (5-1-01)T

**03. Customary Fees.** Medicaid reimburses dentists for procedures on a fee-for-service basis. Usual and customary fees are paid up to the Medicaid maximum allowance. Dentists may make arrangements for private payment with families for services not covered by Medicaid. If the provider accepts any Medicaid payment for a covered service, the Medicaid payment must be accepted as payment in full and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (5-1-01)T

**04. Non-Covered Services.** Non-covered services are procedures not recognized by the American Dental Association (ADA) and/or services not listed in these rules. (5-1-01)T

**901. DENTAL DIAGNOSTIC PROCEDURES.**

The following examinations are not allowed in combination on the same day:

<b>TABLE 901 - DENTAL DIAGNOSTIC PROCEDURES</b>	
<b>Dental Code</b>	<b>Description</b>
<b>01. General Oral Evaluations.</b>	
D0120	Periodic oral evaluation. One periodic examination is allowed every six (6) months.

<b>TABLE 901 - DENTAL DIAGNOSTIC PROCEDURES</b>	
<u>D0140</u>	<u>Limited oral evaluation. An evaluation or re-evaluation limited to a specific oral health problem. Not to be used when a client returns on a later date for follow-up treatment subsequent to either a comprehensive or periodic exam. This may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedures separately. Definitive procedures may be required on the same date as the evaluation.</u>
<u>D0150</u>	<u>Comprehensive oral evaluation. One comprehensive examination is allowed every twelve (12) months. Six (6) months must elapse before a periodic exam can be paid.</u>
<u>D0160</u>	<u>Detailed and extensive oral evaluation. A detailed and extensive problem focused evaluation that entails extensive diagnostic and cognitive modalities based on the findings of a comprehensive oral evaluation. One detailed and extensive oral evaluation is allowed every twelve (12) months.</u>
<u>D0170</u>	<u>Re-evaluation, limited, problem focused. Established client, not post-operative visit.</u>
<b>02. Radiographs/Diagnostic Images.</b>	
<u>D0210</u>	<u>Intraoral - complete series (including bitewings). Complete series x-rays are allowed only once in a three-year period. A complete intraoral series consists of fourteen (14) periapicals and one (1) series of four (4) bitewings.</u>
<u>D0220</u>	<u>Intraoral periapical - first film.</u>
<u>D0230</u>	<u>Intraoral periapical - each additional film.</u>
<u>D0240</u>	<u>Intraoral occlusal film.</u>
<u>D0270</u>	<u>Bitewing - single film. Total of four (4) bitewings allowed every six (6) months.</u>
<u>D0272</u>	<u>Bitewings - two (2) films. Total of four (4) bitewings allowed every six (6) months.</u>
<u>D0274</u>	<u>Bitewings - four (4) films. Total of four (4) bitewings allowed every six (6) months.</u>
<u>D0277</u>	<u>Vertical bitewings. Total of four (4) bitewings allowed every six (6) months.</u>
<u>D0330</u>	<u>Panoramic film. Panorex, panelipse or orthopantograph are also allowed under this code. Panoramic-type films are allowed once in a thirty-six (36) month period. This time limitation does not apply to preoperative or postoperative surgery cases. Doing both a panoramic film and an intraoral complete series is not allowed. Up to four bitewings or periapicals are allowed in addition to a panoramic film.</u>
<u>D0340</u>	<u>Cephalometric film. Allowed once in a twelve (12)-month period.</u>
<b>03. Test And Laboratory Examination.</b>	
<u>D0460</u>	<u>Pulp vitality tests. Includes multiple teeth and contralateral comparison(s) as indicated. Allowed once per visit per day. Limited to six (6) teeth per visit.</u>
<u>D0470</u>	<u>Diagnostic casts.</u>
<u>D0501</u>	<u>Histopathologic examinations.</u>
<b>04. Diagnostic.</b>	
<u>D0999</u>	<u>Unspecified diagnostic procedure, by report. Narrative required when prior authorizing.</u>

(5-1-01)T

**902. DENTAL PREVENTIVE PROCEDURES.**

Medicaid provides no additional allowance for a cavitron or ultrasonic prophylaxis.

<b>TABLE 902 - DENTAL PREVENTIVE PROCEDURES</b>	
<b>Dental Code</b>	<b>Description</b>
<b>01. Dental Prophylaxis.</b>	
D1110	Prophylaxis - Adult (twelve (12) years of age and older). A prophylaxis is allowed once every six (6) months.
D1120	Prophylaxis - Children/young adult (under age twelve (12)). A prophylaxis is allowed once every six (6) months.
<b>02. Fluoride Treatments.</b>	
D1203	Topical application of fluoride - one (1) treatment. Prophylaxis not included. Allowed once every six (6) months for clients under twenty (21).
D1204	Topical application of fluoride - adult, twenty-one (21) years of age and over. Prophylaxis not included. Allowed once every six (6) months.
<b>03. Other Preventive Services.</b>	
D1351	Sealant - per tooth. Mechanically and/or chemically prepared enamel surface. Allowed for clients under twenty-one (21) years of age. Limited to once per tooth every three (3) years. Tooth designation required.
<b>04. Space Management Therapy.</b>	
Space maintainers are allowed to hold space for missing teeth for clients under age twenty-one (21). No reimbursement is allowed for removing maintainers, unless by dentist other than providing dentist. Vertical space maintainers are not covered.	
D1510	Space maintainer - fixed - unilateral. Limited up to age twenty-one (21). Only allowed once per tooth space. Tooth space designation required.
D1515	Space maintainer - fixed - bilateral. Limited up to age twenty-one (21). Only allowed once per arch. Arch designation required.
D1520	Space maintainer, removable - unilateral. Allowed once every two (2) years up to twenty-one (21) years of age. Arch designation required.
D1525	Space maintainer, removable - bilateral. Allowed once every two (2) years up to twenty-one (21) years of age. Arch designation required.
D1550	Re-cementation of space maintainer. Limited up to age twenty-one (21). Only allowed once per quadrant or arch. Quadrant or arch designation required.

(5-1-01)T

**903. DENTAL RESTORATIVE PROCEDURES.**

All restorations must be documented in the client's record to include: procedure, surface, and tooth number (if applicable). This record must be maintained for a period of five (5) years. (5-1-01)T

**01. Posterior Restoration.**

(5-1-01)T

a. A one (1) surface posterior restoration is one in which the restoration involves only one (1) of the five (5) surface classifications: mesial, distal, occlusal, lingual, or facial (including buccal or labial). (5-1-01)T

b. A two (2) surface posterior restoration is one in which the restoration extends to two (2) of the five (5) surface classifications. (5-1-01)T

c. A three (3) surface posterior restoration is one in which the restoration extends to three (3) of the five (5) surface classification surface classifications. (5-1-01)T

d. A four (4) or more surface posterior restoration is one in which the restoration extends to four (4) or more of the five (5) surface classifications. (5-1-01)T

**02. Anterior Proximal Restoration.** (5-1-01)T

a. A one (1) surface anterior proximal restoration is one in which neither the lingual nor facial margin of the restoration extends beyond the line angle. (5-1-01)T

b. A two (2) surface anterior proximal restoration is one in which either the lingual or facial margin of the restoration extends beyond the line angle. (5-1-01)T

c. A three (3) surface anterior proximal restoration is one in which both the lingual and facial margins of the restorations extend beyond the line angle. (5-1-01)T

d. A four (4) or more surface anterior restoration is one in which both the lingual and facial margins extend beyond the line angle and the incisal angle is involved. (5-1-01)T

**03. Amalgams And Resin Restoration.** (5-1-01)T

a. Reimbursement for pit restoration is allowed as a one (1) surface restoration. (5-1-01)T

b. Adhesives (bonding agents), bases, and the adjustment and/or polishing of sealant and restorations are included in the allowance for the major restoration. (5-1-01)T

c. Liners and bases are included as part of the restoration. If pins are used, they should be reported separately. (5-1-01)T

**04. Crowns.** (5-1-01)T

a. When submitting for prior authorization, either an x-ray showing the root canal or an x-ray with a justification detailing the reason for the crown is required. (5-1-01)T

b. Requests for re-doing crowns must be submitted for prior approval and include x-ray and justification. (5-1-01)T

c. Prosthodontics, fixed, procedure codes 06210 through 06920 are not Medicaid covered benefits. (5-1-01)T

**05. Restorations By Codes.**

a. Amalgam Restorations.

<b>TABLE 903.05.a. - RESTORATION BY CODES</b>	
<b>Dental Code</b>	<b>Description</b>
D2110	Amalgam - one (1) surface, primary. Tooth designation required.
D2120	Amalgam - two (2) surfaces, primary. Tooth designation required.
D2130	Amalgam - three (3) surfaces, primary. Tooth designation required.

<b>TABLE 903.05.a. - RESTORATION BY CODES</b>	
D2131	Amalgam - four (4) or more surfaces, primary. Tooth designation required.
D2140	Amalgam - one (1) surface, permanent. Tooth designation required.
D2150	Amalgam - two (2) surfaces, permanent. Tooth designation required.
D2160	Amalgam - three (3) surfaces, permanent. Tooth designation required.
D2161	Amalgam - four (4) or more surfaces, permanent. Tooth designation required.

(5-1-01)T

b. Resin Restorations. Resin refers to a broad category of materials including but not limited to composites. May include bonded composite, light-cured composite, etc. Light-curing, acid-etching, and adhesives (including resin bonding agents) are part of the restoration. Report glass ionomers when used as restorations. If pins are used, report them separately.

(5-1-01)T

<b>TABLE 903.05.b. - RESIN RESTORATIONS</b>	
<b>Dental Code</b>	<b>Description</b>
D2330	Resin - one (1) surface, anterior. Tooth designation required.
D2331	Resin - two (2) surfaces, anterior. Tooth designation required.
D2332	Resin - three (3) surfaces, anterior. Tooth designation required.
D2335	Resin - four (4) or more surfaces or involving incisal angle, anterior. Tooth designation required.
D2337	Resin based composite crown, anterior - permanent. Tooth designation required.
D2380	Resin - one (1) surface, posterior - primary. Tooth designation required. Not a preventive procedure.
D2381	Resin - two (2) surfaces, posterior - primary. Tooth designation required.
D2382	Resin - three (3) or more surfaces, posterior - primary. Tooth designation required.
D2385	Resin - one (1) surface, posterior - permanent. Tooth designation required. Not a preventive procedure.
D2386	Resin - two (2) surfaces, posterior - permanent. Tooth designation required.
D2387	Resin - three (3) surfaces, posterior - permanent. Tooth designation required.
D2388	Resin based composite - four (4) or more surfaces, posterior - permanent. Tooth designation required.

(5-1-01)T

c. Crowns.

<b>TABLE 903.05.c - CROWNS</b>	
<b>Dental Code</b>	<b>Description</b>
D2710	Crown resin (laboratory). Tooth designation required. Prior authorization required.
D2721	Crown resin with predominantly base metal. Tooth designation required. Prior authorization required.
D2750	Crown, porcelain fused to high noble metal. Tooth designation required. Prior authorization required.

<b>TABLE 903.05.c - CROWNS</b>	
<u>D2751</u>	<u>Crown porcelain fused too predominantly base metal. Tooth designation required. Prior authorization required.</u>
<u>D2752</u>	<u>Crown, porcelain fused to noble metal. Tooth designation required. Prior authorization required.</u>
<u>D2790</u>	<u>Crown, full cast, high noble metal. Tooth designation required. Prior authorization required.</u>
<u>D2791</u>	<u>Crown full cast predominantly base metal. Tooth designation required. Prior authorization required.</u>
<u>D2792</u>	<u>Crown, full cast noble metal. Tooth designation required. Prior authorization required.</u>

(5-1-01)T

d. Other Restorative Services.

<b>TABLE 903.05.d. - OTHER RESTORATIVE SERVICES</b>	
<u>Dental Code</u>	<u>Description</u>
<u>D2920</u>	<u>Re-cement crown. Tooth designation required.</u>
<u>D2930</u>	<u>Prefabricated stainless steel crown - primary tooth. Tooth designation required.</u>
<u>D2931</u>	<u>Prefabricated stainless steel crown - permanent tooth. Tooth designation required.</u>
<u>D2932</u>	<u>Prefabricated resin crown. Tooth designation required.</u>
<u>D2940</u>	<u>Sedative filling. Tooth designation required. Surface is not required.</u>
<u>D2950</u>	<u>Core buildup, including any pins. Tooth designation required. Limited to two (2) pins per tooth.</u>
<u>D2951</u>	<u>Pin retention - per tooth, in addition to restoration. Tooth designation required. Limited to two (2) pins per tooth.</u>
<u>D2954</u>	<u>Prefabricated post and core in addition to crown. Tooth designation required.</u>
<u>D2955</u>	<u>Post removal. Tooth designation required.</u>
<u>D2980</u>	<u>Crown repair. Tooth designation required..</u>
<u>D2999</u>	<u>Unspecified restorative procedure, by report. Narrative and tooth designation required when prior authorizing. Requires prior authorization.</u>

(5-1-01)T

**904. ENDODONTICS.**

Pulpotomies and root canal procedures cannot be paid with the same date of service for the same tooth. (5-1-01)T

<b>TABLE 904 - ENDODONTICS</b>	
<u>Dental Code</u>	<u>Description</u>
<b>01. <u>Pulp Capping.</u></b>	
<u>D3110</u>	<u>Pulp cap - direct (excluding final restoration). Tooth designation required.</u>
<b>02. <u>Pulpotomy.</u></b>	
<u>D3220</u>	<u>Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required. Not to be construed as the first step of root canal therapy.</u>

<b>TABLE 904 - ENDODONTICS</b>	
<u>D3221</u>	<u>Gross pulpal debridement, primary &amp; permanent teeth. For relief of acute pain prior to conventional root canal therapy. Tooth designation required.</u>
<b>03. Root Canal Therapy.</b> <u>Pulpectomy is part of root canal therapy. Includes all appointments necessary to complete treatment; also includes intra-operative radiographs. Does not include diagnostic evaluation and necessary radiographs/diagnostic images. Root canal therapy (includes treatment plan, x-rays, clinical procedures and follow-up care) is for permanent teeth only. Separate charges are allowable for open and drain if the procedure is done on different days.</u>	
<u>D3310</u>	<u>Anterior (excluding final restoration). Tooth designation required.</u>
<u>D3320</u>	<u>Bicuspid (excluding final restoration). Tooth designation required.</u>
<u>D3330</u>	<u>Molar (excluding final restoration). Tooth designation required.</u>
<u>D3346</u>	<u>Retreatment of previous root canal therapy, anterior. Tooth designation required.</u>
<u>D3347</u>	<u>Retreatment of previous root canal therapy, bicuspid. Tooth designation required.</u>
<u>D3348</u>	<u>Retreatment of previous root canal therapy, molar. Tooth designation required.</u>
<b>04. Apicoectomy/Periradicular Services.</b>	
<u>D3410</u>	<u>Apicoectomy/Periradicular surgery-anterior surgery or root of anterior tooth. Does not include placement of retrograde filling material. Tooth designation required.</u>
<u>D3421</u>	<u>Apicoectomy/Periradicular surgery-bicuspid (first root). Surgery on one root of a bicuspid does not include placement of retrograde filling material. Tooth designation required.</u>
<u>D3425</u>	<u>Apicoectomy/Periradicular surgery-Molar (first root). Does not include placement of retrograde filling material. Tooth designation required.</u>
<u>D3426</u>	<u>Apicoectomy/Periradicular surgery (each additional root). For molar surgeries when more than one root is being treated during the same procedure. Does not include retrograde filling material placement. Tooth designation required.</u>
<u>D3430</u>	<u>Retrograde filling - per root. For placement of retrograde filling material during Periradicular surgery procedures. Tooth designation required.</u>
<u>D3999</u>	<u>Unspecified restorative procedure, by report. Narrative and tooth designation required. Requires prior authorization.</u>

(5-1-01)T

**905. PERIODONTICS.**

<b>TABLE 905 - PERIODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
<b>01. Surgical Services.</b>	
<u>D4210</u>	<u>Gingivectomy or gingivoplasty - quadrant. Quadrant designation required.</u>
<u>D4211</u>	<u>Gingivectomy or gingivoplasty - per tooth. Tooth designation required.</u>
<u>D4220</u>	<u>Gingival curettage, surgical, per quadrant. Designate quadrant.</u>

<b>TABLE 905 - PERIODONTICS</b>	
<b>02. Non-surgical Periodontal Services.</b>	
<u>D4320</u>	<u>Provisional splinting - intracoronal.</u>
<u>D4321</u>	<u>Provisional splinting - extracoronal.</u>
<u>D4341</u>	<u>Periodontal scaling and root planing (per quadrant). Allowed once in a twelve (12) month period. This procedure is indicated for clients with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.</u>
<u>D4355</u>	<u>Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis. Allowed once in a twelve (12) month period. The removal of subgingival and/or supragingival plaque and calculus. This is a preliminary procedure and does not preclude the need for other procedures.</u>
<b>03. Other Periodontal Services.</b>	
<u>D4910</u>	<u>Periodontal maintenance procedures (following active therapy). Allowed once in a three (3) month period. This procedure is for clients who have completed periodontal treatment (surgical and/or non-surgical periodontal therapies exclusive of D4355) and includes removal of the bacterial flora from crevicular and pocket areas, scaling and polishing of the teeth, periodontal evaluation, and a review of the client's plaque control efficiency.</u>
<u>D4999</u>	<u>Unspecified periodontal procedure. Narrative required when prior authorizing. Requires prior authorization.</u>

(5-1-01)T

**906. PROSTHODONTICS.**

**01. Removable Prosthodontics.**

(5-1-01)T

a. The Medicaid dental program covers only one (1) set of full dentures in a five (5) year period. Full dentures placed immediately must be of structure and quality to be considered the final set. Transitional or interim treatment dentures are not covered. No additional reimbursements are allowed for denture insertions. (5-1-01)T

b. If full dentures are inserted during a month when the client is not eligible, but other work, including laboratory work, is completed during an eligible period, the claim for the dentures is allowed. (5-1-01)T

c. Medicaid pays for partial dentures once every five (5) years. Partial dentures are limited to age twelve (12) and older. One (1) partial per arch is covered. When a partial is inserted during a month when the client is not eligible but all other work, including laboratory work, is completed during an eligible period, the claim for the partial is allowed. (5-1-01)T

d. Laboratory and professional fees may be paid for a partial or complete denture if the client: Decides not to complete the partial or complete denture; Leaves the state; Cannot be located; Expires. An invoice listing lab and professional fees is required when prior authorizing. (5-1-01)T

**02. Removable Prosthodontics By Codes.**

(5-1-01)T

<b>TABLE 906.02 - PROSTHODONTICS</b>	
<u>Dental Code</u>	<u>Description</u>
<b>a.</b>	<b><u>Complete Dentures.</u></b> <u>This includes six (6) months of adjustments following placement.</u>

<b>TABLE 906.02 - PROSTHODONTICS</b>	
D5110	Complete denture - maxillary.
D5120	Complete denture - mandibular.
D5130	Immediate denture - maxillary.
D5140	Immediate denture - mandibular.
<b>b. Partial Dentures.</b>	
This includes six (6) months of care following placement. Limited to 12 (twelve) years and older.	
D5211	Maxillary partial denture - resin base. Includes any conventional clasps, rests, and teeth.
D5212	Mandibular partial denture - resin base. Includes any conventional clasps, rests, and teeth.
D5213	Maxillary partial denture - cast metal framework with resin denture bases. Includes any conventional clasps, rests, and teeth.
D5214	Mandibular partial denture - cast metal framework with resin denture bases. Includes any conventional clasps, rests, and teeth.
<b>c. Adjustments to Complete and Partial Dentures.</b>	
No allowance for adjustments for six (6) months following placement. Adjustments done during this period are included in complete/partial allowance.	
D5410	Adjust complete denture - maxillary.
D5411	Adjust complete denture - mandibular.
D5421	Adjust partial denture - maxillary.
D5422	Adjust partial denture - mandibular.
<b>d. Repairs To Complete Dentures.</b>	
D5510	Repair broken complete denture base. Arch designation required.
D5520	Replace missing or broken teeth - complete denture (each tooth) - six (6) tooth maximum. Tooth designation required.
<b>e. Repairs To Partial Dentures.</b>	
D5610	Repair resin denture base. Arch designation required.
D5620	Repair cast framework. Arch designation required.
D5630	Repair or replace broken clasp. Arch designation required.
D5640	Replace broken teeth, per tooth. Tooth designation required.
D5650	Add tooth to existing partial denture. Does not involve clasp or abutment tooth. Tooth designation required.
D5660	Add clasp to existing partial denture. Involves clasp or abutment tooth.
<b>f. Denture Relining.</b>	
Relines will not be allowed for six (6) months following placement of denture and then only once every two (2) years.	
D5730	Reline complete maxillary denture (chairside).
D5731	Reline complete mandibular denture (chairside).
D5740	Reline maxillary partial denture (chairside).

<b>TABLE 906.02 - PROSTHODONTICS</b>	
D5741	Reline mandibular partial denture (chairside).
D5750	Reline complete maxillary denture (laboratory).
D5751	Reline complete mandibular denture (laboratory).
D5760	Reline maxillary partial denture (laboratory).
D5761	Reline mandibular partial denture (laboratory).
<b>g. Other Removable Prosthetic Services.</b>	
D5850	Tissue conditioning, maxillary - per denture unit.
D5851	Tissue conditioning, mandibular per denture unit.
D5899	Unspecified removable prosthetic procedure, by report. Narrative required when prior authorizing. Requires prior authorization.
0515D	Unable to deliver full or partial denture. Laboratory cost may be paid. An invoice listing lab fees and arch designation required when prior authorizing.

(5-1-01)T

**907. MAXILLO-FACIAL PROSTHETICS.**

<b>TABLE 907 - MAXILLO-FACIAL PROSTHETICS</b>	
<b>Dental Code</b>	<b>Description</b>
D5931	Obturator prosthesis, surgical. Narrative required when prior authorizing. Requires prior authorization.
D5932	Obturator prosthesis, definitive. Narrative required when prior authorizing. Requires prior authorization.
D5933	Obturator prosthesis, modification. Narrative required when prior authorizing. Requires prior authorization.
D5934	Mandibular resection prosthesis with guide flange. Narrative required when prior authorizing. Requires prior authorization.
D5935	Mandibular resection prosthesis without guide flange. Narrative required when prior authorizing. Requires prior authorization.
D5936	Obturator prosthesis, interim. Narrative required when prior authorizing. Requires prior authorization.
D5951	Feeding aid. Narrative required when prior authorizing. Requires prior authorization.
D5952	Speech aid prosthesis, pediatric. Narrative required when prior authorizing. Requires prior authorization.
D5953	Speech aid prosthesis, adult. Narrative required when prior authorizing. Requires prior authorization.
D5954	Palatal augmentation prosthesis. Narrative required when prior authorizing. Requires prior authorization.
D5955	Palatal lift prosthesis, definitive. Narrative required when prior authorizing. Requires prior authorization.

<b>TABLE 907 - MAXILLO-FACIAL PROSTHETICS</b>	
<u>D5958</u>	<u>Palatal lift prosthesis, interim. Narrative required when prior authorizing. Requires prior authorization.</u>
<u>D5959</u>	<u>Palatal life prosthesis, modification. Narrative required when prior authorizing. Requires prior authorization.</u>
<u>D5960</u>	<u>Speech aid prosthesis, modification. Narrative required when prior authorizing. Requires prior authorization.</u>
<u>D5982</u>	<u>Surgical stent. Narrative required when prior authorizing. Requires prior authorization.</u>
<u>D5988</u>	<u>Surgical splint. Narrative required when prior authorizing. Requires prior authorization.</u>
<u>D5999</u>	<u>Unspecified maxillofacial prosthesis. Narrative required when prior authorizing. Requires prior authorization.</u>

(5-1-01)T

**908. FIXED PROSTHODONTICS.**

<b>TABLE 908 - FIXED PROSTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
<b><u>Other Fixed Prosthetic Services.</u></b>	
<u>D6930</u>	<u>Re-cement fixed partial denture.</u>
<u>D6980</u>	<u>Fixed partial denture repair.</u>
<u>D6999</u>	<u>Unspecified fixed prosthodontic procedure, by report. Narrative required when prior authorizing. Requires prior authorization.</u>

(5-1-01)T

**909. ORAL SURGERY.**

Extraction codes include services for local anesthesia and routine preoperative and postoperative care.

<b>TABLE 909 - ORAL SURGERY</b>	
<b>Dental Code</b>	<b>Description</b>
<b><u>01. Simple Extraction.</u></b>	
<u>D7110</u>	<u>Single tooth. Tooth designation required.</u>
<u>D7120</u>	<u>Each additional tooth. Tooth designation required.</u>
<u>D7130</u>	<u>Root removal - exposed roots. Tooth designation required.</u>
<b><u>02. Surgical Extractions.</u></b>	
<u>D7210</u>	<u>Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth. Includes cutting of gingiva and bone, removal of tooth structure, and closure. Tooth designation required.</u>

<b>TABLE 909 - ORAL SURGERY</b>	
<u>D7220</u>	<u>Removal of impacted tooth - soft tissue. Occlusal surface of tooth covered by soft tissue; requires mucoperiosteal flap elevation. Tooth designation required.</u>
<u>D7230</u>	<u>Removal of impacted tooth -- partially bony. Part of crown covered by bone; requires mucoperiosteal flap elevation, bone removal, and may require segmentalization of tooth. Tooth designation required.</u>
<u>D7240</u>	<u>Removal of impacted tooth - completely bony. Most or all of crown covered by bone; requires mucoperiosteal flap elevation, bone removal, and may require segmentalization of tooth. Tooth designation required.</u>
<u>D7241</u>	<u>Removal of impacted tooth - completely bony, with unusual surgical complications. Most or all of crown covered by bone; usually difficult or complicated due to factors such as nerve dissection required, separate closure of maxillary sinus required or aberrant tooth position. Allowed only when pathology is present. Tooth designation required.</u>
<u>D7250</u>	<u>Surgical removal of residual tooth roots (cutting procedure). Includes cutting of gingiva and bone, removal of tooth structure, and closure. Can be completed for the same tooth number as previously extracted without prior approval. Tooth designation required.</u>
<b>03. Other Surgical Procedures.</b>	
<u>D7270</u>	<u>Tooth reimplantation and/or stabilization of accidentally avulsed or displaced tooth and/or alveolus. Permanent teeth only. Tooth designation required. Includes splinting and/or stabilization.</u>
<u>D7280</u>	<u>Surgical exposure of impacted or unerupted tooth for orthodontic reasons. Includes orthodontic attachments. Tooth designation required. Limited to clients under twenty-one (21) years of age.</u>
<u>D7281</u>	<u>Surgical exposure of impacted or unerupted tooth to aid eruption. Tooth designation required. Limited to clients under twenty-one (21) years of age.</u>
<u>D7286</u>	<u>Biopsy of oral tissue - soft.</u>
<b>04. Alveoloplasty.</b>	
<u>D7320</u>	<u>Alveoloplasty not in conjunction with extractions - per quadrant. Quadrant designation is required.</u>
<b>05. Excision Of Bone Tissue.</b>	
<u>D7471</u>	<u>Removal of exostosis. Maxilla or mandible. Arch designation required.</u>
<b>06. Surgical Incision.</b>	
<u>D7510</u>	<u>Incision and drainage of abscess - intraoral soft tissue.</u>
<b>07. Repair Of Traumatic Wounds.</b>	
<u>D7910</u>	<u>Suture of recent small wounds up to five (5) cm.</u>
<b>08. Other Repair Procedures.</b>	
<u>D7960</u>	<u>Frenulectomy (frenectomy or frenotomy) - separate procedure. The frenum may be excised when the tongue has limited mobility; for large diastema between teeth; or when the frenum interferes with a prosthetic appliance; or when it is the etiology of periodontal tissue disease.</u>
<u>D7970</u>	<u>Excision of hyperplastic tissue - per arch. Arch designation required.</u>
<u>D7971</u>	<u>Excision of pericoronal gingiva. Arch designation required.</u>
<u>D7999</u>	<u>Unspecified oral surgery, by report. Narrative required when prior authorizing. Requires prior authorization.</u>

(5-1-01)T

**910. ORTHODONTICS.**

**01. Orthodontics.** Limited to clients age zero (0) to twenty-one (21) years who meet the eligibility requirements, and the Handicapping Malocclusion Index as evaluated by the State Medicaid dental consultant. Transfers: Clients already in orthodontic treatment who transfer to Idaho Medicaid must have their continuing treatment justified and authorized by the State Medicaid dental consultants. (5-1-01)T

**02. Limited Orthodontics.** Orthodontic treatment with a limited objective, not involving the entire dentition may be directed at the only existing problem, or one aspect of a larger problem in which a decision is made to defer or forgo more comprehensive therapy.

<b>TABLE 910.02 - LIMITED ORTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
D8010	Limited orthodontic treatment of primary dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.
D8020	Limited orthodontic treatment of transitional dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.
D8030	Limited orthodontic treatment of adolescent dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.
D8040	Limited orthodontic treatment of adult dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.

(5-1-01)T

**03. Interceptive Orthodontics.** Treatment, using codes for interceptive orthodontic treatment, is for procedures to lessen the severity of future effects of a malformation and to eliminate its cause. An extension of preventive orthodontics that may include localized tooth movement in an otherwise normal dentition. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental crossbite, or recovery of recent minor space loss where overall space is adequate.

<b>TABLE 910.03 INTERCEPTIVE ORTHODONTICS</b>	
<b>Dental Code</b>	<b>Description</b>
D8050	Interceptive orthodontic treatment of primary dentition, per arch. Justification, treatment plan and arch designation required when prior authorizing. Upper and lower arch may be billed separately. Indicate arch. Requires prior authorization.
D8060	Interceptive orthodontic treatment of transition dentition, per arch. Justification, treatment plan and arch designation required when prior authorizing. Upper and lower arch may be billed separately. Indicate arch. Requires prior authorization.

(5-1-01)T

**04. Comprehensive Orthodontic Treatment.** The coordinated diagnosis and treatment leading to the improvement of a client's craniofacial dysfunction and/or dentofacial deformity including anatomical, functional, and aesthetic relationships. Treatment usually, but not necessarily, utilizes fixed orthodontic appliances, and can also include removable appliances, headgear, and maxillary expansion procedures. Must score at least eight (8) points on the State's Handicapping Malocclusion Index. (5-1-01)T

<b>TABLE 910.04 - COMPREHENSIVE ORTHODONTIC TREATMENT</b>	
<b>Dental Code</b>	<b>Description</b>
<u>D8070</u>	Comprehensive orthodontic treatment of transition dentition. Models, panorex, and treatment plan are required when prior authorizing. Requires prior authorization.
<u>D8080</u>	Comprehensive orthodontic treatment of adolescent dentition, up to sixteen (16) years of age. Models, panorex, and treatment plan are required when prior authorizing. Requires prior authorization.
<u>D8090</u>	Comprehensive orthodontic treatment of adult dentition. Justification required. Models, panoramic film, and treatment plan are required when prior authorizing. Requires prior authorization.

(5-1-01)T

**05. Minor Treatment To Control Harmful Habits.**

<b>TABLE 910.05 - MINOR TREATMENT TO CONTROL ORTHODONTIC TREATMENT</b>	
<b>Dental Code</b>	<b>Description</b>
<u>D8210</u>	Removable appliance therapy. Removable indicates client can remove; includes appliances for thumb sucking and tongue thrusting. Justification required when prior authorizing. Will be allowed up to two (2) adjustments when prior authorizing. Replacement appliances are not covered. Requires prior authorization.
<u>D8220</u>	Fixed appliance therapy. Fixed indicates client cannot remove appliance; includes appliances for thumb sucking and tongue thrusting. Justification required when prior authorizing. Will be allowed up to two (2) adjustments when prior authorizing. Replacement appliances are not covered. Requires prior authorization.

(5-1-01)T

**06. Other Services.**

<b>TABLE 910.06 - OTHER SERVICES</b>	
<b>Dental Code</b>	<b>Description</b>
<u>8670</u>	Adjustments monthly. When utilizing treatment codes D8050, D8060, D8070, D8080 or D8090 a maximum of 24 adjustments over two (2) years will be allowed (twelve (12) per year) when prior authorizing. When utilizing treatment codes D8210 or D8220, two (2) adjustments will be allowed per treatment when prior authorizing. Requires prior authorization.
<u>D8680</u>	Orthodontic retention, removal of appliances, construction and placement of retainer(s). Replacement appliances are not covered. Includes both upper and lower retainer if applicable.
<u>D8691</u>	Repair of orthodontic appliance. Limited to one (1) occurrence.
<u>D8999</u>	Unspecified orthodontics. Narrative required when prior authorizing. No payment for lost or destroyed appliances. Requires prior authorization.

(5-1-01)T

**911. ADJUNCTIVE GENERAL SERVICES.**

<b><u>TABLE 911 - ADJUNCTIVE GENERAL SERVICES</u></b>	
<b><u>Dental Code</u></b>	<b><u>Description</u></b>
<b><u>01. Unclassified Treatment.</u></b>	
<u>D9110</u>	<u>Palliative (emergency) treatment of dental pain -minor procedure (open and drain abscess, etc.). Open and drain is included in the fee for root canal when performed during the same sitting. Tooth or quadrant designation required.</u>
<b><u>02. Anesthesia.</u></b>	
<u>D9220</u>	<u>General anesthesia - first thirty (30) minutes. Not included as general anesthesia are tranquilization; nitrous oxide; or enteral or parenteral administration of analgesic, sedative, tranquilizing, or dissociative agents.</u>
<u>D9221</u>	<u>General anesthesia - each additional fifteen (15) minutes.</u>
<u>D9230</u>	<u>Analgesia - includes nitrous oxide.</u>
<u>D9241</u>	<u>Intravenous sedation/analgesia - first thirty (30) minutes. Provider certification required.</u>
<u>D9242</u>	<u>Intravenous sedation/analgesia - each additional fifteen (15) minutes. Provider certification required.</u>
<b><u>03. Professional Consultation.</u></b>	
<u>D9310</u>	<u>Consultation. Provided by dentist or physician whose opinion or advice regarding the evaluation, management and/or treatment of a specific problem or condition is requested by another dentist or physician. The written or verbal request for a consult must be documented in the client's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the client's medical record and communicated to the requesting dentist or physician. A dental consultant may initiate diagnostic and/or therapeutic services at the same or subsequent visit.</u>
<b><u>04. Professional Visits.</u></b>	
<u>D9410</u>	<u>House/Extended Care Facility Calls. Includes visits to nursing homes, long-term care facilities, hospice sites, institutions, etc. Report in addition to reporting appropriate code numbers for actual services performed. Limited to once per day per client. To be used when client's health restrictions require treatment at the house/extended care facility. If procedures are done in the hospital, use procedure code D9420.</u>
<u>D9420</u>	<u>Hospital Calls. May be reported when providing treatment in hospital or ambulatory surgical center, in addition to reporting appropriate code numbers for actual services performed. Limited once per day per client. Not covered for routine preoperative and postoperative. If procedures are done in other than hospital or surgery center use procedure code D9410 found in this table.</u>
<u>D9430</u>	<u>Office visit for observation (during regularly scheduled hours). No other services performed.</u>
<u>D9440</u>	<u>Office visit after regularly scheduled hours.</u>
<b><u>05. Miscellaneous Service.</u></b>	
<u>D9920</u>	<u>Behavior Management. May be reported in addition to treatment provided when the client is developmentally disabled, mentally ill, or is especially uncooperative and difficult to manage, resulting in the dental staff providing additional time, skill and/or assistance to render treatment. Notation and justification must be written in the client's record identifying the specific behavior problem and the technique used to manage it. Allowed once per client per day.</u>

<b>TABLE 911 - ADJUNCTIVE GENERAL SERVICES</b>	
D9930	Treatment of complication (post-surgical) - unusual circumstances.
D9940	Occlusal guards - removable dental appliances which are designed to minimize the effects of bruxism (tooth grinding) and other occlusal factors. No payment for replacement of lost or destroyed appliances.
D9951	Occlusal adjustment, limited. May also be known as equilibration; reshaping the occlusal surfaces of teeth to create harmonious contact relationships between the maxillary and mandibular teeth. Presently includes discing/odontoplasty/enamoplasty. Typically reported on a per-visit basis. Allowed once every twelve (12) months.
D9952	Occlusal adjustment, complete. Occlusal adjustment may require several appointments of varying length and sedation may be necessary to attain adequate relaxation of the musculature. Study casts mounted on an articulating instrument may be used for analysis of occlusal disharmony. It is designed to achieve functional relationships and masticatory efficiency in conjunction with restorative treatment, orthodontics, orthognathic surgery, or jaw trauma, when indicated. Occlusal adjustment enhances the healing potential of tissues affected by the lesions of occlusal trauma. Justification required when prior authorizing. Requires prior authorization.
D9999	Unspecified adjunctive procedure, by report. Narrative required when prior authorizing. Requires prior authorization.

(5-1-01)T

**912. PWC CODES.**

The following are the only codes covered for women on the Pregnant Women and Children (PWC) program.

<b>TABLE 912 - PWC CODES</b>	
<b>Dental Code</b>	<b>Description</b>
<b>01. Clinical Oral Examinations.</b>	
D0140	Limited oral evaluation.
<b>02. Radiographs.</b>	
D0220	Intraoral - periapical - first film.
D0230	Intraoral - periapical - each additional film.
D0330	Panoramic film.
<b>03. Restorative Services.</b>	
D2940	Sedative filling. Tooth designation required.
<b>04. Pulp Capping.</b>	
D3110	Pulp cap - direct (excluding final restoration). Tooth designation required.
D3220	Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required.
<b>05. Adjunctive Periodontal Services.</b>	
D04341	Periodontal scaling, root planning, per quadrant. Allowed once in a twelve (12) month period. This procedure is indicated for clients with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.

<b>TABLE 912 - PWC CODES</b>	
D4355	Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis.
<b>06. Oral Surgery.</b> Extractions - includes local anesthesia and routine postoperative care.	
D7110	Single tooth. Tooth designation required.
D7120	Each additional tooth. Tooth designation required.
D7130	Root removal - exposed roots. Tooth designation required.
<b>07. Surgical.</b> Extractions - includes local anesthesia and routine postoperative care.	
D7210	Surgical removal of an erupted tooth requiring elevation of the mucoperiosteal flap and removal of tooth structure, and closure. Tooth designation required.
D7220	Removal of impacted tooth - soft tissue. Tooth designation required.
D7230	Removal of impacted tooth - partially bony. Tooth designation required.
D7240	Removal of impacted tooth - completely bony. Tooth designation required.
D7241	Removal of impacted tooth - complicated. Tooth designation required.
D7250	Surgical removal of residual tooth roots (cutting procedure). Tooth designation required.
<b>08. Surgical Incision.</b>	
D7510	Incision and drainage of abscess - intraoral soft tissue.
<b>09. Unclassified Treatment.</b>	
D9110	Palliative (emergency) treatment of dental pain - minor procedures.
<b>10. Professional Consultation.</b>	
D9310	Consultation. Provided by dentist or physician whose opinion or advice regarding the evaluation, management and/or treatment of a specific problem or condition is requested by another dentist or physician. The written or verbal request for a consult must be documented in the client's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the client's medical record and communicated to the requesting dentist or physician. A dental consultant may initiate diagnostic and/or therapeutic services at the same or subsequent visit.
<b>11. Professional Visits.</b>	
D9420	Hospital call - May be reported when providing treatment in hospital or ambulatory surgical center, in addition to reporting appropriate code numbers for actual services performed. Limited to once per day per client.
D9430	Office visit for observation - regular office hours - no other services performed.
D9440	Office visit - after regularly scheduled hours.

(5-1-01)T

**913. DENTURIST POLICY GUIDELINES.**

**01. Overview.** Idaho Medicaid processes charges submitted by Idaho licensed denturists for services provided to eligible clients. Approved services are limited to those services allowed by Idaho code for Idaho licensed denturists.

(5-1-01)T

**02. Client Eligibility.** Clients without eligibility restrictions are eligible for denturist services. Clients eligible for the PWC program or who have only QMB eligibility are not eligible for denturist services. (5-1-01)T

**03. Prior Authorization.** Prior authorization is not required for the denturist procedures except for 0515D found in Section 839 of these rules. Eligibility must be checked with VRS. (5-1-01)T

**04. Payment.** Denturists will be reimbursed for procedures on a fee-for-service basis. Usual and customary charges will be paid up to the Medicaid maximum allowance. If a provider accepts Medicaid payment for a covered service, the Medicaid payment must be accepted as full payment and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (5-1-01)T

**05. Service Limitations.** Medicaid allows complete and immediate denture construction once every five (5) years. Denture relines are allowed once every two (2) years. Complete and partial denture adjustment is considered part of the initial denture construction service for the first six (6) months. (5-1-01)T

**914. DENTURIST PROCEDURE CODES.**  
 The following codes are valid denturist procedure codes: (5-1-01)T

<b>TABLE 839 - DENTURIST PROCEDURE CODES</b>	
<b>Dental Code</b>	<b>Description.</b>
<u>0515D</u>	Unable to deliver full denture. Arch designation required. Prior authorization required. Laboratory cost may be paid for full dentures if the client: a) decides not to complete the denture; b) leaves the state; c) cannot be located; d) expires.
<u>5110D</u>	Complete denture, upper
<u>5120D</u>	Complete denture, lower
<u>5130D</u>	Immediate denture, upper
<u>5140D</u>	Immediate denture, lower
<u>5410D</u>	Adjust complete denture, upper
<u>5411D</u>	Adjust complete denture, lower
<u>5421D</u>	Adjust partial denture, upper
<u>5422D</u>	Adjust partial denture, lower
<u>5510D</u>	Repair broken complete denture base; arch designation required.
<u>5520D</u>	Replace missing or broken teeth, complete denture (each tooth); six (6) teeth maximum. Tooth designation required.
<u>5610D</u>	Repair resin saddle or base; arch designation required.
<u>5620D</u>	Repair cast framework; arch designation required.
<u>5630D</u>	Repair or replace broken clasp; arch designation required.
<u>5640D</u>	Replace broken teeth per tooth; tooth designation required.
<u>5650D</u>	Add tooth to existing partial denture; tooth designation required.

<b>TABLE 839 - DENTURIST PROCEDURE CODES</b>	
<u>5660D</u>	<u>Add clasp to existing partial denture; not requiring the altering of oral tissue or natural teeth. Tooth designation required.</u>
<u>5730D</u>	<u>Reline complete upper denture (chairside)</u>
<u>5731D</u>	<u>Reline complete lower denture (chairside)</u>
<u>5740D</u>	<u>Reline upper partial denture (chairside)</u>
<u>5741D</u>	<u>Reline lower partial denture (chairside)</u>
<u>5750D</u>	<u>Reline complete upper denture (laboratory)</u>
<u>5751D</u>	<u>Reline complete lower denture (laboratory)</u>
<u>5760D</u>	<u>Reline upper partial denture (laboratory)</u>
<u>5761D</u>	<u>Reline lower partial denture (laboratory)</u>

(5-1-01)T

**915. DENTAL PRIOR AUTHORIZATION.**

All procedures that require prior authorization must be approved by the Medicaid dental consultant prior to the service being rendered. Prior authorization requires written submission including diagnostics. Verbal authorizations will not be given. Retroactive authorization will be given only in an emergency situation or as the result of retroactive eligibility. Prior authorization of Medicaid dental procedures does not guarantee payment. Client Medicaid eligibility must be verified by the provider before the authorized service is rendered.

(5-1-01)T

**916. -- 995. (RESERVED).**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-0101**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

The State Tax Commission deleted Rules 071, 075 and 076 and promulgated a new Rule 128 - Certificates For Resale And Other Exemption Claims in a previous rulemaking. Many sales tax rules reference the deleted rules and those rules are being amended to correct the reference to the deleted rules and add the reference to Rule 128. The rules are also being amended to delete obsolete language referring to ISTC rules and to make them consistent with the terminology now used to reference rules. The Form ST-108BT has been revised and has a new title, reference to this form is being amended to reflect the changes. There are no substantive changes being made to these rules.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2001.

DATED this 18th day of July, 2001.

James Husted  
Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36  
Boise, ID 83722

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**THE FOLLOWING TEXT OF DOCKET NO. 35-0102-0101 IS BEING PRINTED AT THE SUBSECTION LEVEL TO MAKE UNIVERSAL CORRECTIONS TO CITATIONS WITHIN THE RULES THAT CURRENTLY REFERENCE RULES THAT HAVE BEEN DELETED. NO OTHER SUBSTANTIVE CHANGES ARE BEING MADE TO THE RULES IN THIS RULEMAKING.**

*SUBSECTIONS 012.04, 012.13, 012.14.a., 012.14.b., and 012.14.c.*

**012. CONTRACTORS IMPROVING REAL PROPERTY (Rule 012).**

**04. Real Property.** See ~~Idaho Sales Tax Administrative~~ Rules 010 and 067 of these rules.  
(6-23-94)(\_\_\_\_)

**13. Exempt Purchases By Contractors.** A contractor can buy materials tax exempt, provided that he will install them into real property in a state that does not have a sales tax, such as Oregon, Montana, or Alaska. This exemption also applies to a contractor improving real property in Washington if he will not owe a sales or use tax for his activity there, even though a sales or use tax may be owed by a third party. Prior to July 1, 1993, this exemption was extended only to Idaho resident contractors. In order to grant this exemption the retailer must have a properly completed exemption certificate on file. See ~~Idaho Sales Tax Administrative~~ Rule ~~075~~ 128 of these rules. Idaho tax applies to materials purchased or withdrawn from inventory for use in a contract to improve real property in states with a sales tax, such as Nevada, Utah, or Wyoming.  
(6-23-94)(\_\_\_\_)

**14. Cross-References.** (7-1-93)

a. Road and paving contractors, see ~~Idaho Sales Tax Administrative~~ Rule 013 of these rules.  
(6-23-94)(\_\_\_\_)

b. Contractor/retailers, see ~~Idaho Sales Tax Administrative~~ Rule 014 of these rules.  
(6-23-94)(\_\_\_\_)

c. Well drillers/pump installers, see ~~Idaho Sales Tax Administrative~~ Rule 015 of these rules.  
(6-23-94)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

*SUBSECTIONS 014.01 and 014.03.c.*

**014. CONTRACTORS/RETAILERS (Rule 014).**

**01. In General.** This rule shows how Idaho sales and use tax applies to contractors who are also retailers. The general principles in ~~ISTC~~ Rule 012 of these rules also apply to contractor/retailers and should be reviewed along with this rule.  
(7-1-93)(\_\_\_\_)

**03. Record Keeping Procedure.** For convenience, the contractor-retailer may choose to follow any consistent procedure that can apply to his particular operation.  
(7-1-93)

c. If the contractor does major jobs, he may want to use separate accounting procedures, and make his purchases for stock without paying tax by issuing a resale certificate, but pay tax on his major job material purchases. See ~~ISTC~~ Rule ~~071~~ 128 of these rules.  
(7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

*SUBSECTIONS 016.02 and 016.03*

**016. RETAIL SALE OF ASPHALT, CONCRETE, AND CONCRETE PRODUCTS (Rule 016).**

**02. Agricultural Irrigation.** Materials purchased for agricultural irrigation are exempt from sales tax whether purchased by the farmer, contractor, or subcontractor. This exemption applies even if the material is permanently affixed to real estate, such as concrete used to line ditches or ponds. See ~~ISTC~~ Rule 096 of these rules.

The buyer must provide the seller with an exemption certificate. See ~~ISTC~~ Rule ~~075~~ 128 of these rules.

(7-1-93)(\_\_\_\_)

**03. Production Exemption.** The retailer who produces and sells asphalt or concrete may qualify to claim the production exemption on equipment and supplies used directly to produce the concrete or asphalt for resale. See ~~ISTC~~ Rule 079 of these rules. However, trucks used by a ready-mix operator do not qualify for the production exemption because they are used for transportation. Although they may incidentally contribute to the manufacture of the final article, purchases of the truck, trailer, and the truck-mounted concrete mixer, which becomes a part of the motor vehicle, are not exempt from the tax.

(7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 022.04**

**022. DROP SHIPMENTS (Rule 022).**

**04. Resale Certificate.** If either the Manufacturer or the Retailer is engaged in interstate commerce, the resale certificate which the Retailer provides to the Manufacturer may be in the form prescribed for uniform exemption certificates by the Multistate Tax Commission if the rules set forth in Rule ~~071~~ 128 of these rules are met.

(7-1-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTIONS 024.02, 024.08, and 024.13**

**024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (Rule 024).**

**02. Bare Equipment Rental.** A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who mainly rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule ~~071~~ 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a reasonable rental value for the period during which he used his own equipment.

(7-1-99)(\_\_\_\_)

**08. Exempt Equipment Rentals.** Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter must furnish the owner with a properly completed and signed exemption certificate. See Rule ~~075~~ 128 of these rules.

(7-1-99)(\_\_\_\_)

**13. Cross-References. (7-1-93)**

*ea.* See Rule 025 of these rules on real property rental. (7-1-99)

*eb.* See Rule 037 of these rules on aircraft and flying services. (7-1-99)

*ec.* See Rule 038 of these rules on flying clubs. (7-1-99)

*ed.* See Rule 044 of these rules on trade-in for rental or lease property. (7-1-99)

*ee.* See Rule 049 of these rules on warranties and service agreements. (7-1-99)

*ef.* See Rule 073 of these rules on transient equipment. (7-1-99)

~~hg.~~ See Rule 106 of these rules on motor vehicles. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTIONS 033.05, 033.07, and 033.12.b.**

**033. SALES OF NEWSPAPERS AND MAGAZINES (Rule 033).**

**05. Individual Sales.** Individual or separate sales of newspapers or magazines, except as provided in ~~Subsection 033.06~~ of this rule for a single price of eleven cents (\$0.11) or less are not taxable. Individual or separate sales of newspapers or magazines for a single price exceeding eleven cents (\$0.11) are subject to tax according to the schedule provided in Section 63-3619, Idaho Code. Separate or individual sales of newspapers or magazines together with retail sales or other tangible personal property subject to tax shall be taxable if the total sales price of all taxable property included in the sale exceeds eleven cents (\$0.11). ~~(7-1-93)~~(\_\_\_\_)

**07. Independent Retailer Sales.** The sale of newspapers by a publisher to an independent retailer will be tax exempt only if the retailer provides the publisher with a properly executed resale certificate. See Rule ~~071 128~~ of these rules. The incidence of sales tax then falls upon the independent retailer who must have a registered seller's permit number and will be responsible for collecting, accounting for and remitting the sales tax on all newspapers thus purchased and resold. ~~(7-1-99)~~(\_\_\_\_)

**12. Cross-Reference.** (7-1-93)

b. See Rule ~~071 128~~ of these rules, ~~Resale Certificates-Purchases~~ for Resale and Other Exemption ~~(7-1-99)~~(\_\_\_\_)  
Claims.

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 036.03**

**036. SIGNS AND BILLBOARDS (Rule 036).**

**03. Material That Becomes Part Of A Sign.** Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule ~~071 128~~ of these rules. ~~(7-1-99)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTIONS 038.02, 038.04, and 038.05**

**038. FLYING CLUBS (Rule 038).**

**02. Rental Or Sale Of Aircraft To Members.** The flying club is a retailer who is required to obtain a seller's permit and collect and remit sales tax. The sales tax, at the prevailing tax rate, is to be collected by the flying club and remitted to the Commission in the manner prescribed for other retailers. The tax is applicable whether the aircraft is sold or is rented on an hourly, daily, weekly, monthly, or any other basis. The flying club, primarily engaged in the business of making bare equipment rentals to club members, may purchase or lease the aircraft without paying sales tax by giving to its vendor a valid resale certificate as required by ~~STC~~ Rule ~~071 128~~ of these rules. ~~(7-1-93)~~(\_\_\_\_)

**04. Aircraft Repair Parts.** If the flying club is responsible for the maintenance of the aircraft, the club may purchase the necessary repair and replacement parts without paying tax by providing a valid resale certificate.

See *ISTC* Rule ~~071~~ 128 of these rules. (7-1-93)( )

05. **Cross-Reference.** Aircraft and Flying Services see *ISTC* Rule 037 of these rules. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 040.03**

**040. PROFESSIONAL TAXIDERMIST (Rule 040).**

03. **Materials.** All materials, such as mounting material, tanning material, and preservatives may be purchased by the taxidermist tax exempt since he will charge tax on the finished product. He may provide his supplier with a resale certificate. See *ISTC* Rule ~~071~~ 128 of these rules. (7-1-93)( )

**SUBSECTIONS 041.03, 041.08, and 041.10**

**041. FOOD, MEALS, OR DRINKS (Rule 041).**

03. **Clubs And Organizations.** Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See *ISTC* Rule 030 of these rules. Special rules apply to religious organizations. See *ISTC* Rule 086 of these rules. (7-1-93)( )

08. **Church Organization.** Special rules apply to religious organizations. See *ISTC* Rule 086 of these rules. (7-1-93)( )

10. **Nontaxable Purchases By Establishments Selling Meals Or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See *ISTC* Rule ~~071~~ 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 049.04.b.**

**049. WARRANTIES AND SERVICE AGREEMENTS (Rule 049).**

04. **Non-Optional Warranty Or Service Agreement.** If the warranty or service agreement is required as a condition of the sale, lease, or rental of tangible personal property, the gross sales price is subject to the sales tax whether or not the charge for the warranty or service agreement is separately stated from the sales price of the tangible personal property. (7-1-93)

b. When a third-party dealer or repair facility performs the repair, the seller of the warranty or service agreement may provide the repairer with a resale certificate. See *ISTC* Rule ~~071~~ 128 of these rules. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 050.04**

**050. VETERINARIANS AND VETERINARY SUPPLIES (Rule 050).**

**04. Retail Sales Of Drugs And Supplies.** The sale of drugs and veterinary supplies by a veterinarian is a retail sale. Veterinarians making such sales must obtain a seller's permit and must charge and remit the sales tax on such sales. However, the sale of drugs and veterinary supplies, except hand tools with a unit price of less than one hundred dollars (\$100), to a cattle rancher, dairyman or other person operating for gain or profit a stock, dairy, poultry, fish, fur or other ranch is exempt if documented by an exemption certificate as provided in ~~STC Rule 075 128.~~ ~~(7-1-93)(\_\_\_\_\_)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 052.06**

**052. SALE OF TANGIBLE PERSONAL PROPERTY RELATING TO FUNERAL SERVICES (Rule 052).**

**06. Documenting Purchases For Resale.** Funeral directors purchasing tangible personal property for resale will be required to document the purchase for resale by providing their seller with a resale certificate. See Rule ~~071 128~~ of these rules. The purchase by the funeral director of such items as caskets and special clothing is a purchase for resale, even though the sale of the same property by the funeral director is exempt. ~~(7-1-99)(\_\_\_\_\_)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 054.02.b.**

**054. PERSONS ENGAGED IN PRINTING (Rule 054).**

**02. Printing Upon Special Order.** Persons primarily engaged in the printing of tangible personal property upon special order for a consideration may purchase equipment and supplies directly used to produce such property exempt from sales or use tax. (7-1-93)

b. When purchasing goods exempt from tax, the printer must provide the seller with a properly completed exemption certificate. See ~~Idaho Sales Tax Administrative Rule 075 128~~ of these rules. ~~(7-1-97)(\_\_\_\_\_)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTIONS 055.02.b., 055.07, 055.07.b., 055.08.a., 055.08.b., 055.09.b., 055.09.c., and 055.10.a. through 055.10.e.**

**055. PERSONS ENGAGED IN ADVERTISING (Rule 055).**

**02. Advertising Agency As Agent Of Client Or As Non-Agent.** An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals. To the extent advertising agencies act on their own behalf in acquiring tangible personal property they are purchasers of the property with respect to the supplier. Generally, they are sellers of any of the property so acquired which they deliver to, or cause to be delivered

to, their clients or to third parties for the benefit of their client. They are also sellers of any of the property which they retain but title to which they transfer to their client. (7-1-93)

b. To establish that a particular acquisition was made as agent for its client ~~+~~ the agency must clearly disclose to the supplier the name of the client for whom the agency is acting as agent; the agency must obtain, prior to the acquisition, and retain written evidence of agent status with the clients; and the agency must clearly state on the billing to its client that it is acting as agent for its client and that tax has been paid to the supplier or use tax has been accrued by the agency on behalf of the client. The agency fee billed to the client, whether or not separately stated, is not subject to the tax. The agency, in its records, must retain evidence of the payment of the tax. The agency may make no use of the property for its own account, such as charging the item to the account of more than one client. An advertising agency purchasing tangible personal property as an agent on behalf of its client may not issue a resale certificate, as provided by ~~ISTC~~ Rule ~~077~~ 128 of these rules, to the supplier. It will be presumed that an advertising agency who issues a resale certificate to its supplier is purchasing the tangible personal property on its own behalf for resale and is not acting as an agent for its client. (7-1-93)(\_\_\_\_)

**07. Sales Of Design Services.** Determining whether design fees are subject to the sales tax will depend on the object of the transaction. A fee charged to a customer for creation and design of a logo, product or business trademark, letterhead, or similar item which does not involve the transfer of tangible personal property beyond that which is required to convey the design to the customer, is a sale of services not subject to the sales tax. When design fees are services agreed to be rendered as a part of the sale of tangible personal property, sales tax will apply to the design fee. Tax does not apply to such fees when an agency acts as an agent. See Subsection 055.067.e. of this rule. (7-1-93)(\_\_\_\_)

b. NOTE: Subsections 055.067.b. through 055.067.d. of this rule assume no agent relationship. Example 2: An advertising agency is commissioned by a client to design a trademark for its business and provide stationery with the trademark printed on it. On the charges billed to the client, the design fee is separately stated from the charges for printing the stationery and the paper stock. The advertising agency must charge sales tax on the entire amount charged. The object of the transaction is to obtain tangible personal property, the stationery. The services agreed to be rendered, the design, are inconsequential to the transaction. (7-1-93)(\_\_\_\_)

**08. Purchases By Radio And Television Broadcasters.** Section 63-3622S, Idaho Code, provides an exemption from tax for purchases of tangible personal property directly used and consumed in the production and broadcasting of radio and television programs by businesses primarily devoted to such production and broadcasting. (7-1-93)

a. When broadcasters purchase tangible personal property to be directly used and consumed in the production of television or radio advertising, no sales tax applies if they give their vendors a properly executed exemption certificate. See ~~ISTC~~ Rule ~~075~~ 128 of these rules. (7-1-93)(\_\_\_\_)

b. When a radio or television broadcaster produces custom films or audio recordings that will not be broadcast, the exemption provided by Section 63-3622S, Idaho Code, does not apply. Purchases of tangible personal property will be taxed as provided by Subsection 055.086.b. of this rule. (7-1-93)(\_\_\_\_)

**09. Purchases By Advertising Agencies, Graphic Artists, And Similar Operations.** Persons engaged in advertising and graphic artists may provide both nontaxable services and taxable sales of tangible personal property. (7-1-93)

b. When engaged in the retail sale of tangible personal property, such as the sale of non-media advertising items, custom films, custom audio recordings, or printed goods, the producer/agency/artist, when purchasing tangible personal property to be incorporated into the product for resale, may provide vendors with a properly executed resale certificate. See ~~ISTC~~ ~~077~~ Rule 128 of these rules. Items considered to be directly incorporated into the product for resale include purchases of: Art supplies such as poster board, paper products, inks, letters, and paints; amounts charged by others to produce veloxs, negatives, lithographic plates, electrotpe, and other such items; photographic works; prerecorded sounds and music; and printing charges. (7-1-93)(\_\_\_\_)

c. Purchases from photographers. The sale of photographic prints, photostats, negatives, film, and other articles of tangible personal property are retail sales subject to sales tax. See ~~ISTC~~ Rule 056 of these rules.

Photographs, film, negatives, photostats, and other tangible personal property purchased by an advertising agency which are to be incorporated into media advertising are subject to sales tax. The total selling price on which sales tax will be charged is the amount charged by the photographer for shooting, developing, processing, and printing the photograph, film, negative, etc. Separately stated charges for travel expenses incurred by the photographer while under contract to an advertising agency for such items as travel, food, and lodging which are reimbursed by the advertising agency are not subject to sales tax. Photographs, film, negatives, photostats, and other tangible personal property purchased for resale, see, Subsection 055.089.b. of this rule. (7-1-93)(\_\_\_\_)

- 10. Cross-References.** (7-1-93)
- ea. Newspapers and periodicals. See *ISTC* Rules 033 and 079 of these rules. (7-1-93)(\_\_\_\_)
- b. Signs. See *ISTC* Rule 036 of these rules. (7-1-93)(\_\_\_\_)
- ac. Persons engaged in printing. See *ISTC* Rule 054 of these rules. (7-1-93)(\_\_\_\_)
- d. Motion picture films. See *ISTC* Rule 087 of these rules. (7-1-93)(\_\_\_\_)
- e. Resale certificates-purchases for resale. See *ISTC* Rule ~~071~~ 128 of these rules. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

***SUBSECTION 057.02.b. and 057.03.a.***

**057. DRY CLEANERS, LAUNDRIES, LAUNDROMATS, AND LINEN SUPPLIERS (Rule 057).**

- 02. Linen Suppliers.** (7-1-93)
- b. Items acquired by these firms which are purchased for resale, rental or lease in the ordinary course of business, may be purchased exempt from sales tax if a properly executed resale certificate is provided to the seller, in accordance with *Idaho Sales Tax Administrative* Rule ~~071~~ 128 of these rules. (7-1-98)(\_\_\_\_)
- 03. Laundromats.** (7-1-93)
- a. Receipts from coin-operated washers and dryers are not subject to the sales tax. Sales of cleaning supplies such as soap or bleach through coin operated vending machines, are subject to the tax as provided by *Idaho Sales Tax Administrative* Rule 058 of these rules. (7-1-98)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

***SUBSECTIONS 062.06 and 062.08***

**062. REPAIRS SALE OF PARTS AND MATERIAL (Rule 062).**

- 06. Repairs Versus Fabrications.** Repairs and renovations to tangible personal property must not be confused with fabrications of tangible personal property. Fabricated tangible personal property is subject to sales tax on the entire price whether the parts and materials are separately stated or not. See *ISTC* Rules 011 and 029 of these rules. (7-1-93)(\_\_\_\_)
- 08. Parts For Resale.** When a repair shop buys parts that will be resold to its customers or an auto dealer buys parts to install in a car which is being reconditioned for sale, they should not pay tax to the supplier if they provide the documents required by *ISTC* Rule ~~071~~ 128 of these rules. (7-1-93)(\_\_\_\_)

(BREAK IN CONTINUITY OF SECTIONS)

**SUBSECTIONS 072.02 and 072.08**

**072. APPLICATION AND PAYMENT OF USE TAX (Rule 072).**

**02. Use.** Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term "use" does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See ~~Idaho State Administrative Sales Tax~~ Rules 012, 077, and 079 of these rules.

(6-23-94)( )

**08. Use Undeterminable At Time Of Purchase.** In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by ~~Idaho State Administrative Sales Tax~~ Rule ~~071~~ 128 of these rules. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax.

(6-23-94)( )

(BREAK IN CONTINUITY OF SECTIONS)

**SUBSECTIONS 079.08.c. and 079.09**

**079. PRODUCTION EXEMPTION (Rule 079).**

**08. Transportation Activities.** Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See ~~Idaho Sales Tax Administrative~~ Rule 083 of these rules regarding farming. (6-23-94)( )

**09. Exemption Certificate.** To claim the production exemption the customer must complete an exemption certificate for the seller's records. See ~~Idaho Sales Tax Administrative~~ Rule ~~075~~ 128 of these rules.

(6-23-94)( )

**SUBSECTIONS 080, 080.02.g., and 080.03**

**080. LUMBER MANUFACTURING (Rule 080).**

This rule is intended to illustrate the application of the production exemption to the lumber manufacturing industry. The provisions of this rule are based upon the usual methods of doing business used in the industry generally. Factual differences in the manner in which a specific taxpayer may conduct its business can result in determinations different from those stated in this rule. In cases not covered by this rule, the general principles stated in ~~ASTC~~ Rule 079 of these rules will control. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. This rule is limited in application to the manufacturing of rough and finished lumber and does not encompass the manufacturing of plywood, particleboard, veneer, or paper products.

(7-1-93)( )

**02. Taxable Activities.** Generally considered as taxable activities are the following: (7-1-93)

- g. Other items specifically identified as taxable in *ISTC* Rule 079 of these rules. (7-1-93)(\_\_\_\_)

**03. Exemption Certificate.** Persons engaged in lumber manufacturing who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See *ISTC* Rule 075 128 of these rules. (7-1-93)(\_\_\_\_)

***SUBSECTIONS 081, 081.02.g., and 081.03***

**081. UNDERGROUND MINING (Rule 081).**

This rule is meant to show how the production exemption applies to the underground mining industry. This rule is based on the usual methods of doing business. Differences in the way a specific taxpayer conducts his business can result in determinations different from those in this rule. In cases not covered by this rule, the general principles in *ISTC* Rule 079 of these rules apply. Determinations of taxability are based on the primary use of equipment. (7-1-93)(\_\_\_\_)

- 02. Taxable Purchases.** The following are generally considered taxable: (7-1-93)

- g. Other items specifically identified as taxable in *ISTC* Rule 079 of these rules. (7-1-93)(\_\_\_\_)

**03. Exemption Certificate.** To claim this exemption underground miners must complete an exemption certificate for the seller's records. See *ISTC* Rule 075 128 of these rules. (7-1-93)(\_\_\_\_)

***SUBSECTIONS 082, 082.02.h., and 083.03***

**082. ABOVEGROUND, OPEN PIT, MINING (Rule 082).**

This rule is meant to show how the production exemption applies to the aboveground, open pit, mining industry. This rule is based on the usual methods of doing business in the industry. Differences in the way a specific taxpayer conducts his business can result in determinations different than those stated in this rule. In cases not covered by this rule, the general principles stated in *ISTC* Rule 079 of these rules apply. Determinations of taxability are made based on primary use of the equipment. This rule applies only to aboveground mining activities commonly referred to as open pit mining. (7-1-93)(\_\_\_\_)

- 02. Taxable Purchases.** The following are generally considered taxable: (7-1-93)

- h. Other items specifically identified as taxable in *ISTC* Rule 079 of these rules. (7-1-93)(\_\_\_\_)

**03. Exemption Certificate.** To claim the production exemption, above ground miners must complete an exemption certificate for the seller's records. See *ISTC* Rule 075 128 of these rules. (7-1-93)(\_\_\_\_)

***SUBSECTIONS 083, 083.08.f., and 083.09***

**083. FARMING AND RANCHING (Rule 083).**

This rule is intended to illustrate the application of the production exemption to the farming and ranching industry. The provisions of this rule are based on the usual methods of doing business in the industry. Specific factual differences in the manner in which a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Cases not covered by this rule are controlled by the general principles stated in *ISTC* Rule 079 of these rules. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. (7-1-93)(\_\_\_\_)

- 08. The Farming Exemption Does Not Include:** (9-1-93)

- f. Other items specifically identified as taxable in *ISTC* Rule 079 of these rules. (7-1-93)(\_\_\_\_)

**09. Exemption Certificate.** Farmers or ranchers who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See ~~ISTC~~ Rule ~~075~~ 128 of these rules. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTIONS 086.02.a., 086.02.b., and 086.04**

**086. SALES AND PURCHASES BY RELIGIOUS ORGANIZATIONS (Rule 086).**

**02. Meals Sold By A Church To Members Only.** An exemption is provided by Section 63-3622J, Idaho Code, for the sale of meals by a church to its members at a church function. For the exemption to apply, the meals must be sold to members only. (7-1-93)

a. If the meal is open to members only, the church may purchase the food without paying tax by providing the vendor of the food with a properly completed exemption certificate or, if the church holds an Idaho seller's permit number, it may provide the vendor with a properly completed resale certificate. See ~~ISTC~~ Rules ~~071~~ and ~~075~~ 128 of these rules. (7-1-93)(\_\_\_\_)

b. If the meal is open to persons other than members of the church, this exemption does not apply. See Subsection 086.03 of this rule. (7-1-93)(\_\_\_\_)

**04. Sales Of Literature By A Nonprofit Corporation.** Literature which is both published and sold by qualifying nonprofit corporations is exempt from sales tax. Refer to ~~ISTC~~ Rule 085 of these rules. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTIONS 088.03, 088.04.a., and 088.04.c.**

**088. SALE OR PURCHASE OF MATTER USED TO PRODUCE HEAT BY BURNING (Rule 088).**

**03. Liquefied Propane.** Sales of liquefied propane in units of fifteen (15) gallons or less, identified in the vendor's records as cylinder sales, will be considered to be used to produce heat by burning as defined in Subsection 088.02 ~~above~~ of this rule. These sales will not require that a sales tax exemption certificate be obtained from the purchaser, and shall be exempt from the tax regardless of the use to which the purchaser places the liquefied propane. (7-1-93)(\_\_\_\_)

**04. Documentation Of Other Exempt Sales.** All other sales of natural gas, liquefied propane, coal, wood, oil, petroleum, and its by-products are subject to the tax, unless specifically exempted or excluded elsewhere in the Sales Tax Act. Such exempted or excluded sales must be documented in the following manner: (7-1-93)

a. If purchased for resale, the vendor must obtain a properly executed resale certificate. See ~~ISTC~~ Rule ~~071~~ 128 of these rules. (7-1-93)(\_\_\_\_)

c. If the purchaser claims an exemption from the tax for reasons other than heat by burning, a properly executed exemption certificate must be obtained. See ~~ISTC~~ Rule ~~075~~ 128 of these rules. (7-1-93)(\_\_\_\_)

**SUBSECTIONS 089.02.a. and 089.02.b.**

**089. BOY SCOUT, GIRL SCOUT AND 4-H GROUP SALES AND PURCHASES (Rule 089).**

**02. Purchases By Scout And 4-H Groups.** (7-1-93)

a. When a fee is charged to members to attend a camp, the food for the camp may be purchased by the club without paying tax. The club must provide the retailers of the food a validly executed resale certificate. See ~~ISTC~~ Rule ~~071~~ 128 of these rules. (7-1-93)(\_\_\_\_)

b. Other tangible personal property purchased for resale to members of the club or to the public may be purchased without tax as in Subsection 089.02.a. ~~above~~ of this rule. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 096.05**

**096. IRRIGATION EQUIPMENT AND SUPPLIES (Rule 096).**

**05. Exemption Certificate.** A purchaser's right to the exemption shall be documented by the use of an exemption certificate in the manner prescribed by ~~ISTC~~ Rule ~~075~~ 128 of these rules. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTIONS 099.01.b., 099.01.c., 099.07, and 099.09.h.**

**099. OCCASIONAL SALES (Rule 099).**

**01. Occasional Seller.** Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-98)

b. Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108~~BT~~ to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (7-1-98)(\_\_\_\_)

c. Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See ~~Idaho Sales Tax Administrative~~ Rule 020 of these rules. (7-1-97)(\_\_\_\_)

**07. Motor Vehicles.** Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, written clearance must be obtained from the State Tax Commission prior to applying for an Idaho motor vehicle title. See ~~Idaho Sales Tax Administrative~~ Rule 107 of these rules regarding sales of licensed motor vehicles that do not qualify as occasional sales. (7-1-98)(\_\_\_\_)

**09. Taxable Sales Of Aircraft, Boats, And Recreation Related Vehicles.** The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

h. Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See ~~Idaho Sales Tax~~

~~Administrative~~ Rule 037 of these rules regarding other exemption provided for aircraft. (7-1-97)( )

**SUBSECTIONS 100.03 and 100.04.c.**

**100. PRESCRIPTIONS (Rule 100).**

**03. Purchases By Practitioners.** A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by ~~Idaho Sales Tax Administrative Rule 75 128 of these rules~~. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (6-23-94)( )

**04. Purchases By Nursing Homes And For Profit Hospitals.** The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit. Tax must be paid on all purchases, with two (2) exceptions. The institution may purchase medical items exempted by Section 63-3622N, Idaho Code, if: (7-1-93)

c. An exemption certificate must be completed and provided to the vendor of the exempted items. See Rule ~~075 128~~ of these rules. (7-1-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 110.03**

**110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (Rule 110).**

**03. Reimbursement.** The assessor will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property, and each Form ST-108~~BT~~, ~~Boat-Trailer-Snowmobile-ATV- Truck~~ Camper, Transport Trailer, ~~Unit~~-Office Trailer and Untitled Boat Certificate, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBSECTION 128.05.h.**

**128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (Rule 128).**

**05. Description And Proper Execution Of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. They must comply with any additional requirements provided in this rule or on the form in question. (3-6-00)

h. ~~Boat-Trailer-Snowmobile-ATV- Truck~~ Camper, Transport Trailer, ~~Unit~~-Office Trailer and Untitled Boat Certificate, Form ST-108~~BT~~, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108~~BT~~ to make the claim. (3-6-00)( )

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0105-0101**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

RULE 141 - Reporting And Calculations Of Line Flush Allowance - is being amended to clarify the terminology of undyed diesel fuel to be consistent with language use by the industry.

RULE 180 - Refunds To Licensed Fuel Distributors - is being amended to clarify how claims for refunds should be made.

RULE 200 - Use Tax On Special Fuels - is being amended to reflect the changes passed by the 2001 Legislature for temporary permits with extended time limits. The hour limit has been removed and the permit is being called a temporary permit.

RULE 280 - Nontaxable Uses Of Motor Fuels - is being amended to delete subsections that are no longer necessary and to update terminology.

RULE 292 - Calculation Of Refunds For Nontaxable Uses Of Motor Fuels In Motor Vehicles - is being amended to delete the weight requirement for vehicles and to clarify documentation needed to claim refunds.

RULE 400 - IFTA Licensing And Special Fuels Permitting Requirements For Motor Vehicles Over 26,000 Pounds Maximum Gross Weight - is being amended to reflect the changes passed by the 2001 Legislature on the temporary permits. The hourly time limit is being deleted and the language is updated to a temporary permit.

RULE - 420 - Documentation For IFTA Carrier Reporting And Special Fuels Users Claiming Nontaxable Use Of Special Fuel In A Motor Vehicle - is being amended to update the language to IFTA licensees and to delete the hourly trip permit to the temporary permit.

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

No fees are applicable.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the amendments to the motor fuels are of a nonsubstantive nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Randy Nilson at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2001.

DATED this 18th day of July, 2001.

Randy Nilson, 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

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-0101

**141. REPORTING AND CALCULATION OF LINE FLUSH ALLOWANCE (Rule 141).**

**01. Eligibility.** Any licensed or unlicensed fuel distributor may use the Line Flush Allowance worksheet to calculate a refund of special fuels tax if the distributor delivers both dyed and ~~clear~~ undyed diesel fuel to customers from the same fuel delivery truck. These "mixed" deliveries may cause ~~clear~~ undyed, tax-paid, diesel fuel to be contaminated with red dye. This fuel must then be put into the truck's dyed diesel fuel tank. This situation occurs when: (4-5-00)(\_\_\_\_\_)

- a. Dyed diesel fuel is used to flush ~~clear~~ undyed diesel fuel from the truck's pressurized line; or (4-5-00)(\_\_\_\_\_)
- b. ~~Clear~~ Undyed diesel fuel is used to flush dyed diesel fuel from the truck's pressurized line. (4-5-00)(\_\_\_\_\_)

**02. Calculation Methods.** Two (2) methods are available to calculate the total nontaxable gallons used to flush lines for the filing period. Both methods may be used throughout the filing period, but only one (1) method may be used to account for each separate flush. Check the box on the worksheet to indicate the methodology used to calculate non-taxable gallons. The two (2) methods are: (4-5-00)

- a. A standard allowance of five (5) gallons multiplied by the number of flushes; or (4-5-00)
- b. The actual gallons used to flush the lines. (4-5-00)

**03. Records Required.** Records supporting this claim should not be submitted with this claim, but must be retained by the claimant. All fuels tax refund claims are subject to review and/or audit by the Idaho State Tax Commission. The fuel distributor must keep records in accordance with one (1) or both of the methodologies that follow: (4-5-00)

- a. Standard allowance. Logs prepared by the delivery truck driver indicating the truck number, date, number of flushes, and the type of each flush; and/or (4-5-00)
- b. Actual gallons. Delivery tickets or totalizer log readings for each flush. (4-5-00)

**04. Calculation Of Line Flush Allowance.** The line flush allowance worksheet contains the following elements: (4-5-00)

- a. Total number of times the pressurized line was flushed during the filing period. (4-5-00)
- b. Number of times the line was flushed using the standard allowance. (4-5-00)

- c. Number of gallons to be claimed using the standard allowance (Subsection 141.04.b. times five (5) gallons per flush). (4-5-00)
- d. Number of times the line was flushed using actual gallons. (4-5-00)
- e. Number of gallons to be claimed using actual gallons (Delivery tickets/totalizer log readings). (4-5-00)
- f. Nontaxable gallons to be reported on Form 75. (Add Subsections 141.04.c. and 141.04.e. Enter the total nontaxable gallons in the Refund Section under Undyed Diesel Fuel on the Form 75). (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**180. REFUNDS TO LICENSED FUEL DISTRIBUTORS (Rule 180).**

**01. Refund Claim.** Any licensed fuel distributor believing that he has paid motor fuels taxes or transfer fees in any amount more than ~~that~~ properly imposed may file a ~~written~~ claim with the State Tax Commission for a refund of such excess motor fuels taxes or transfer fee on forms prescribed by the State Tax Commission. The claim for refund must conform with the requirements of this rule. (7-1-98)(\_\_\_\_)

**02. Refund Claim Documentation.** The claim must be ~~in writing~~ filed on a distributor's fuel tax report and must include the full name and address of the claimant and his fuel distributor's license number. ~~If the claim is for a casualty loss, the claim~~ must include a detailed statement of the reason the claimant believes a refund is due. The statement should include a description of the transactions, if any, to which the motor fuel tax relates and must ~~state be~~ filed on a distributor's fuel tax report for the period for which the claimed excess motor fuel tax or transfer fee amount was paid. The claim for refund must include a statement that the amount refunded to the licensed fuel distributor has been, or will be, refunded by the fuel distributor to the purchaser, or that such motor fuel taxes or transfer fees have never been collected from the purchaser. (7-1-98)(\_\_\_\_)

**03. Refund As A Credit.** A claimant may claim a ~~refund~~ bad debt credit for motor fuels taxes as a credit against motor fuels taxes or transfer fee due. ~~The credit may be taken against~~ on the distributor's fuel tax report ~~but the report must be preceded by a claim for refund in the manner required by Subsection 180.02 of this rule.~~ (7-1-98)(\_\_\_\_)

**04. Statute Of Limitation.** No claim for refund will be allowed by the State Tax Commission if it is filed more than three (3) years from the time the payment of the claimed excess motor fuels taxes or transfer fee was made. The time the payment was made is the date upon which the distributor's fuel tax report relating to the payment was filed or was required to be filed, whichever occurred first. (7-1-98)(\_\_\_\_)

**05. Appeal Procedures.** No claim for refund may be filed relating to any motor fuels taxes or transfer fees that have been asserted by a Notice of Deficiency Determination. A taxpayer contending that motor fuels taxes or transfer fees have been erroneously or illegally collected by the State Tax Commission pursuant to a Notice of Deficiency Determination must seek a redetermination by using the appeal procedures required by law. (7-1-98)(\_\_\_\_)

**06. Notice Of Denial.** All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or any part of the claim should not be allowed to the claimant, notice of denial of the claim shall be mailed to the claimant by certified mail. The notice shall include a statement of the reasons for the denial. When seeking an appeal or redetermination of a denial of a claimed refund or credit, the notice of denial shall be the equivalent of a Notice of Deficiency Determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must do so by filing a petition for redetermination in the manner prescribed in Idaho Administration and Enforcement Rule 300, as incorporated herein by Rule 330 of these rules. Such a petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to, or served

upon, the claimant.

(7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. USE TAX ON SPECIAL FUELS (Rule 200).**

The tax imposed by Section 63-2416, Idaho Code, is a use tax complementary to the principal tax imposed by that section. In the case of special fuels used to operate or propel motor vehicles, which do not display a ~~ninety-six (96) hour-trip~~ temporary permit issued by the Idaho Transportation Department or are not licensed under IFTA, or to operate non-commercial motor boats within Idaho, and on which the Idaho special fuels tax was not paid at the time of purchase, the special fuels tax must be paid in the manner provided in Section 63-2421, Idaho Code, and Rule 230 of these rules. Motor vehicles which display a ~~ninety-six (96) hour-trip~~ temporary permit shall pay the special fuels tax in the manner provided in Section 63-2439, Idaho Code, and Rule 400 of these rules. Motor vehicles licensed under IFTA shall pay the fuels tax in the manner provided in that agreement. (7-1-98)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**292. CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES. (RULE 292).**

**01. Fuel Records Required For Refund Claims.** Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power-take-off (PTO) equipment. Records must be kept as described in Subsection 290.01 of these rules. (4-5-00)

**02. Nontaxable Miles Defined.** Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property owner, or defined in Subsection 292.03. Miles driven on a construction site would also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 130 of these rules regarding application of Idaho Sales and Use Taxes. (4-5-00)

**03. Additional Nontaxable Roadways.** Roadways defined in Section 63-2401, Idaho Code, include those constructed and maintained by the United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. ~~If the special fuels user is not must maintain records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision, unless using the "standard MPG" for its industry found in Subsection 290.02, the special fuels user must maintain records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision of these rules. When special fuels users compute their special fuels tax liability or refund, they may exclude from total taxable miles traveled in Idaho the miles traveled on these roadways when computing their special fuels tax liability or refund if:~~ (4-5-00)

~~a. The cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them or if the special fuel user is a subcontractor of a prime contractor required by contract to bear the primary cost of maintaining the roadway; and~~ (4-5-00)(\_\_\_\_)

~~b. They operate motor vehicles that weigh over twenty six thousand (26,000) pounds maximum gross weight on that roadway.~~ (4-5-00)

**04. Calculation.** Determine the number of taxable miles driven in Idaho following the procedure established in Subsection 290.01 of these rules. Divide this number by the actual MPG, the statutory MPG established by Subsection 290.01 of these rules, or the industry standard MPG provided by Subsection 290.02 of these rules. Subtract this number of gallons from the total Idaho tax-paid gallons purchased for the subject vehicles. (4-5-00)

**05. Power-Take-Off And Auxiliary Engine Allowances (Allowances).** Power take-off (PTO) allowances are available for special fuels powered vehicles. Auxiliary engine allowances are available for both special fuels and gasoline powered vehicles. (4-5-00)

a. **Standard Allowances For Special Fuels.** Nontaxable gallons of special fuels may be claimed when special fuels are used for purposes other than to operate or propel a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for allowances are turning a vehicle-mounted cement mixer or off-loading product. (4-5-00)

b. **Standard Allowances For Gasoline.** Nontaxable gallons of gasoline may be claimed when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the licensed motor vehicle. No claim for gasoline is allowed when gasoline is used by the licensed motor vehicle's main engine even to operate the motor vehicle's PTO unit. (4-5-00)( )

c. **Rates For Standard Allowances.** The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (4-5-00)

i. ~~Gasoline/fuel oil: one point five (1.5) gallons per ten thousand (10,000) gallons pumped;~~  
Allowances based on unit quantities:

<u>Allowance Type</u>	<u>Allowance Rates</u>	<u>x</u>	<u>Unit Quantities</u>
<u>Gasoline/fuel oil</u>	<u>0.00015 gallons</u>	<u>x</u>	<u>Gallons pumped</u>
<u>Bulk cement</u>	<u>0.1858 gallons</u>	<u>x</u>	<u>Tons pumped</u>
<u>Refrigeration unit/reefer</u>	<u>0.75 gallons</u>	<u>x</u>	<u>Hours unit operated</u>
<u>Tree length timber/logs</u>	<u>0.0503 gallons</u>	<u>x</u>	<u>Tons Hauled</u>
<u>Tree length timber/logs</u>	<u>3.46 gallons</u>	<u>x</u>	<u>Hours unit operated</u>
<u>Carpet cleaning</u>	<u>0.75 gallons</u>	<u>x</u>	<u>Hours unit operated</u>

(4-5-00)( )

ii. ~~Bulk cement: four (4) gallons per twenty two point five (22.5) tons pumped;~~ Allowances based on percentages:

<u>Allowance Type</u>	<u>Percentage Per Gallon</u>	<u>x</u>	<u>Gallons Consumed</u>
<u>Concrete mixing</u>	<u>30%</u>	<u>x</u>	<u>Gallons consumed</u>
<u>Garbage compaction</u>	<u>25%</u>	<u>x</u>	<u>Gallons consumed</u>

(4-5-00)( )

iii. ~~Concrete: thirty percent (30%) of total fuel consumed;~~ (4-5-00)

iv. ~~Refrigeration Unit (Reefer): point seventy-five (.75) gallons per hour;~~ (4-5-00)

v. ~~Tree length timber: .0503 gallon/ton; 19.88 tons/gallon; 3.46 gallons/hour;~~ (4-5-00)

vi. ~~Garbage Compaction: twenty five percent (25%) of total fuel consumed;~~ (4-5-00)

vii. ~~Carpet Cleaning: point seventy-five (.75) gallons/hour.~~ (4-5-00)

**06. Non-Standard Allowances.** A request for an allowance not listed in Subsection 292.05 or greater than those listed must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. Taxpayers must send requests for approval to:

FUELS TAX POLICY  
IDAHO STATE TAX COMMISSION  
P. O. BOX 36  
BOISE, ID 83722-0036

The Idaho State Tax Commission may request additional information or documentation as needed in order to make a determination on the request. (4-5-00)

**07. Nontaxable Gallons Of Fuel Claimed By Non-IFTA Licensees.** The nontaxable gallons of fuel claimed by non-IFTA licensees may be the allowance gallons listed in Subsections 292.05 and 292.06 and/or the gallons calculated under Subsection 292.04. Only actual MPG's, computed by adjusting total fuel as defined in Subsection 292.01 by the allowance gallons, may be used to calculate a fuels tax refund based on both nontaxable miles and allowances. Fuels tax refunds based solely on an allowance may be calculated without regard to mileage and fuel consumption (MPG) information. (4-5-00)

**08. IFTA Licensees Qualifying For Power Take-Off (PTO) And Auxiliary Engine Allowances (Allowances).** Allowances listed in Subsection 292.05 or established as provided in Subsection 292.06 may be granted for IFTA licensees by recomputing the total gallons of fuel consumed in all jurisdictions. IFTA licensees claiming refunds of Idaho fuels tax resulting from the allowances established in Subsections 292.05 and 292.06, must file the claim on an Idaho Fuels Use Report Form 75 with the relevant supplemental worksheet. (4-5-00)

a. The IFTA licensee must recompute the total taxable fuel for Idaho by deducting the gallons determined by the allowances in all jurisdictions from the total number of gallons of fleet fuel consumed that was reported on the IFTA return. Using the new net gallons consumed, recompute the fleet miles per gallon. Apply the new fleet miles per gallon to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho nontaxable gallons available for refund, the licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. (4-5-00)

b. Additionally, a copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to review and audit, therefore, adequate documentation must be retained by the licensee. (4-5-00)

c. IFTA licensees that used an assumed MPG when preparing their original IFTA return may not claim any additional refund. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. IFTA LICENSING AND SPECIAL FUELS PERMITTING REQUIREMENTS FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND POUNDS MAXIMUM GROSS WEIGHT (Rule 400).**

The following rules relate to the special fuels tax licensing system provided in Sections 63-2438 through 63-2440, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA. (7-1-98)

**01. In General.** It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels as defined in Section 63-2401(20), Idaho Code, on the highways of this state without having obtained one (1) of the following: (7-1-98)

- Code. a. A registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code. (7-1-98)
- b. A ~~ninety-six (96) hour trip~~ temporary permit from the Idaho Transportation Department. (7-1-98)(\_\_\_\_)
- c. An IFTA license. (7-1-98)
- d. In the case of vehicles powered by gaseous fuels, a gaseous fuel permit as provided by Section 63-2424, Idaho Code. (7-1-98)

~~02.~~ **Federal Or In-State Governmental Vehicles.** Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. (7-1-98)(\_\_\_\_)

~~03.~~ **Out-Of-State Governmental Vehicles.** Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. (7-1-98)

~~034.~~ **Trip Temporary Permits.** Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code, or IFTA licensed, shall secure a ~~ninety-six (96) hour~~ temporary trip permit from the Idaho Transportation Department in the manner provided and required by that department. (7-1-98)(\_\_\_\_)

~~045.~~ **Failure To Obtain An IFTA License Or A Temporary Trip Permit.** Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code, an IFTA license or an Idaho ~~ninety-six (96) hour trip~~ temporary permit is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections 63-2434 and 63-3065, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a ~~ninety-six (96) hour trip~~ temporary permit. (7-1-98)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**420. DOCUMENTATION FOR IFTA ~~CARRIER LICENSEE~~ LICENSEE REPORTING AND SPECIAL FUELS USERS CLAIMING NONTAXABLE USE OF SPECIAL FUELS IN A MOTOR VEHICLE (Rule 420).**

**01. Records Required For Idaho IFTA ~~Carriers Licensee~~ Licensee And Special Fuels Users Claiming Nontaxable Use Of Special Fuels In A Motor Vehicle.** Records are required to verify the accuracy of any tax report or worksheet filed with the State Tax Commission. The taxpayer displaying, or required to display, an IFTA decal or a ~~ninety-six (96) hour trip~~ temporary permit, or a special fuels user claiming nontaxable use of tax-paid special fuels in a motor vehicle using a Form 75, shall retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to the mileage of the motor vehicles. (7-1-98)(\_\_\_\_)

**02. Fuel Records.** In order for the IFTA ~~carrier licensee~~ licensee or other special fuels user seeking a refund for the nontaxable use of special fuels in its motor vehicle to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the special fuels user showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax-paid purchases taken as credit must include, but not be limited to, the following: (7-1-98)(\_\_\_\_)

- a. The date of each receipt of fuel; (7-1-98)
- b. The name and address of the person from whom purchased or received; (7-1-98)
- c. The number of gallons received; (7-1-98)
- d. Both taxable and nontaxable usage of fuel; (7-1-98)
- e. The type of fuel; (7-1-98)
- f. The specific vehicle or equipment into which the fuel was placed; (7-1-98)
- g. Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records; (7-1-98)
- h. Documents necessary to substantiate volume, time or weight for power-take-off and auxiliary engine allowances described in Rule 292 of these rules. (3-30-01)

**03. Mileage Records.** Non-IFTA ~~carriers~~ special fuels users who qualify to use one (1) of the “Standard MPG’s” found in Rule 290 of these rules need only record and report Idaho taxable miles. All IFTA ~~carriers~~ licensees and all other special fuels users seeking a fuels tax refund for nontaxable special fuels used in a motor vehicle shall maintain detailed mileage records, such as trip logs or trip sheets, on an individual-vehicle basis. Such records shall contain, but not be limited to: (~~3-30-01~~)(\_\_\_\_)

- a. Total trip miles, including vicinity miles, except for non-IFTA motor vehicle(s) using one (1) of the “standard miles per gallon” (MPG) found in Rule 290 of these rules; (3-30-01)
- b. Miles traveled for taxable and nontaxable use. Only taxable miles traveled are required for non-IFTA motor vehicles using one (1) of the “standard miles per gallon” found in Rule 290 of these rules; (3-30-01)
- c. Mileage recaps for each vehicle. IFTA ~~carriers~~ licensees are required to keep mileage recaps for each jurisdiction in which the IFTA vehicle operated; (~~3-30-01~~)(\_\_\_\_)
- d. Starting and ending dates of trips; (7-1-98)
- e. Trip origin, interim stops and destination; (7-1-98)
- f. Hubometer or odometer readings from the beginning and ending of each trip and at the crossing of each jurisdiction’s border. Interstate motor vehicles that, for certain time periods, do not cross jurisdiction borders need only record daily hubometer or odometer readings for those time periods; (7-1-98)
- g. Complete routes of travel, including pick up and delivery locations; (7-1-98)
- h. Vehicle license number or unit number; (7-1-98)
- i. Driver’s name. (7-1-98)

**04. Additional Records Requirements.** Other records may be required, such as: (7-1-98)

- a. Bills of lading or manifest documents; (7-1-98)
- b. Vehicle dispatch ledgers; (7-1-98)
- c. Accounts payable and receivable; (7-1-98)
- d. Lease agreements; (7-1-98)

- e. Quarterly mileage returns filed with the Idaho Transportation Department; (7-1-98)
- f. Driver pay records; (7-1-98)
- g. Driver logs; (7-1-98)
- h. Fuel use trip permits; and (7-1-98)
- i. Other documents used in preparing fuel tax reports. (7-1-98)

**05. Trip Summaries.** Individual trips shall be accumulated into monthly, quarterly, or annual summaries. These summaries shall be used as the basis for the miles submitted on the IFTA quarterly or annual reports, and on the worksheet submitted with the Form 75. (7-1-98)

**06. Computer Printout Support.** Hard copies of summary computer printouts must be supported by trip sheets or logs verifying mileage traveled. (7-1-98)

**07. Mileage Information.** Information recorded on trip sheets must be legible and reflect actual miles traveled. Mileage records must include all movement of the vehicle including loaded, empty, and tractor-only (bobtail) miles. Non-IFTA ~~carriers~~ special fuels users who qualify to use a "Standard MPG" need only record and report taxable miles in Idaho. ~~(7-1-98)( )~~

**08. Records Retention.** The records required in this rule shall be retained for the greater of three (3) years for Idaho special fuels users or the time during which the taxpayer's income tax return is subject to adjustment by either the State Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return. Records shall be retained for four (4) years for IFTA license holders. (7-1-98)

**09. U.S./Metric Conversion.** The following conversion factors must be used, when necessary, to convert fuel and mileage records to U.S. or metric measurement:

One (1) Liter	=	.2642 gallons
One (1) Gallon	=	3.785 liters
One (1) Mile	=	1.6093 kilometers
One (1) Kilometer	=	.62137 miles

(7-1-98)

**10. Mileage Disputes.** Whenever a mileage dispute arises between the taxpayer and the State Tax Commission, the official mileage map distributed by the appropriate authority in each jurisdiction will be used to resolve the point to point mileage differences. (7-1-98)

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.09 - IDAHO COUNTY OPTION KITCHEN AND TABLE WINE**  
**TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0109-0101**

**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

RULE 014 - Security for tax required is being amended to change the reference to the Director of Law Enforcement to the Director of the Idaho State Police.

RULE 020 - Violation of act or rules-report to director of law enforcement is being amended to change the reference to the Director of the Idaho State Police.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed change is of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2001.

DATED this 18th day of July, 2001.

James Husted  
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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0109-0101**

**014. SECURITY FOR TAX REQUIRED (Rule 014).**

**01. Security For Payment Of Tax.** Each person liable for payment of the taxes provided by Chapter 13, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

**02. Amount Of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly wine tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-98)

**03. Security Requirement Excused.** A distributor or winery having an average wine tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax will not be required to furnish security. (7-1-93)

**04. Security For A New Distributor.** When a new distributor or winery applies for a reporting permit number as required by Idaho Wine Tax Administrative Rule 15, security will be required. (7-1-98)

a. If a wine tax reporting history is available from a previous ownership, the security required will be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no wine tax reporting history available from a previous ownership of the business, the new distributor or winery shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (7-1-98)

**05. Types Of Security.** A person required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the security required: (7-1-98)

a. Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)

b. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)

c. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)

d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)

e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)

**06. Petition To Waive Security Deposit.** Other than as provided in Subsection 014.03 of this rule, a security shall be required in all instances, unless the State Tax Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

**07. Taxpayer Petition For Release From Security Requirement.** (7-1-93)

a. The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all wine tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all wine tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

b. Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefor. (7-1-98)

c. If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 014.07.a. of this rule, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 014.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and may be immediately reported to the Director of ~~Law Enforcement~~ the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (7-1-98)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. VIOLATION OF ACT OR RULES - REPORT TO DIRECTOR OF ~~LAW ENFORCEMENT~~ THE IDAHO STATE POLICE (Rule 020).**

Whenever a violation of any of the requirements imposed on any person by the Act or these rules has occurred, the violation shall be immediately reported to the Director of ~~Law Enforcement~~ the Idaho State Police, who may initiate the action necessary for the enforcement of the Act, including without limitation, license revocation proceedings. (7-1-93)(\_\_\_\_)

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0112-0101**  
**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2001.

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:

RULE 013 - Security for tax required is being amended to change the reference to the Director of Law Enforcement to the Director of the Idaho State Police.

RULE 019 - Violation of act or regulations is being amended to change the reference to the Director of Law Enforcement to the Director of the Idaho State Police. The title of the rule is being changed to state that it is a rule and not a regulation.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed change is of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact James Husted, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2001.

DATED this 18th day of July, 2001.

James Husted  
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

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0112-0101**

**013. SECURITY FOR TAX REQUIRED (Rule 013).**

**01. Security For Payment Of Tax.** Each person liable for payment of the taxes provided by Chapter 10, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on beer by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

**02. Amount Of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly beer tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-93)

**03. Security Requirement Excused.** A wholesaler or brewery having an average beer tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax will not be required to furnish security. (7-1-93)

**04. Security For A New Wholesaler Or Brewery.** When a new wholesaler or brewery applies for a reporting permit number as required by Idaho Beer Tax Administrative Rule 016, security will be required. (7-1-98)

a. If a beer tax reporting history is available from a previous ownership, the security required shall be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no beer tax reporting history available from a previous ownership of the business, the new wholesaler or brewer shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (7-1-98)

**05. Types Of Security.** A person required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the security required: (7-1-98)

a. Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)

b. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)

c. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)

d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penal ties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)

e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)

**06. Petition To Waive Security Deposit.** Other than as provided in Subsection 013.03 of this rule, a security shall be required in all instances, unless the State Tax Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

**07. Taxpayer Petition For Release From Security Requirement.** (7-1-93)

a. The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all beer tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all beer tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

b. Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefor. (7-1-98)

c. If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 013.07.a. above, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 013.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and shall be immediately reported to the Director of ~~Law Enforcement~~ the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (7-1-98)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**019. VIOLATION OF ACT OR ~~REGULATIONS~~ RULES - REPORT TO DIRECTOR OF ~~LAW ENFORCEMENT~~ THE IDAHO STATE POLICE (Rule 019).**

Whenever any violation of any of the requirements imposed on any person by the Act or these rules has occurred, the same shall be immediately reported to the Director of ~~Law Enforcement~~ the Idaho State Police, who may initiate any action necessary for the enforcement of the Act, including without limitation, license revocation proceedings. (7-1-93)( )

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.42 - RULES GOVERNING HIGHWAY RIGHT-OF-WAY ENCROACHMENTS**  
**ON STATE RIGHTS-OF-WAY**

**DOCKET NO. 39-0342-0101**

**NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 40-310(9), 40-311(1), 40-312(3), 40-313(2), 49-202(19), (23), and (28), 49-221, and 67-5203, 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. It was determined that certain text included in Docket 39-0342-0001, presented to the 2001 Legislature, was not consistent with legislative intent, and also needed clarification. Those subsections have been revised to reflect legislative intent and provide clarification, based on recommendations from the legislators and industry representatives.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the May 2, 2001 Idaho Administrative Bulletin, Volume 01-5, pages 47 through 52.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lance Johnson, Traffic Engineer, 334-8557, or Steve Holland, Transportation Staff Engineering Assistant, 334-8565.

DATED this 18th day of July, 2001.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810 / FAX: 208-334-8195

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**IDAPA 39, TITLE 03, Chapter 42**

**RULES GOVERNING USE OF RIGHT-OF-WAY ENCROACHMENTS**  
**ON STATE HIGHWAY RIGHTS-OF-WAY**

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

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 01-5, May 2, 2001, pages 47 through 52.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.**

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.42 - RULES GOVERNING HIGHWAY RIGHT-OF-WAY ENCROACHMENTS**  
**ON STATE RIGHTS-OF-WAY**

**DOCKET NO. 39-0342-0102**

**NOTICE OF RULEMAKING - PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective after the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. After the pending rule is approved, rejected, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 40-310(9), 40-311(1), 40-312(3), 40-313(2), 49-202(19), (23), and (28), 49-221, and 67-5203, 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. This rulemaking is being promulgated to include the application fee schedule in the rule. In the past, the fee schedule was only available at the Headquarters or District Offices. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-5, pages 53 through 55.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 40-314(3), Idaho Code. Permit application fees are to be based on the Department's cost to produce the permit and administer the program. Current fees, as authorized in the above referenced code, and previously approved in rule as a fee schedule available at the Department, have not been reviewed or increased since 1982, and have never been published as part of this rule. Proposed increases in Docket 39-0342-0001 were rejected by the House and Senate Transportation Committees in the 2001 Legislature. The currently proposed fees have been reviewed by those committees and found acceptable for consideration in this rulemaking. Because of the fee being imposed or increased through this rulemaking, this pending rule will not be adopted as final nor will it become effective until it has been approved, amended, or modified by concurrent resolution of the legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lance Johnson, Traffic Engineer, 334-8557, or Steve Holland, Transportation Staff Engineering Assistant, 334-8565.

DATED this 17th day of July, 2001.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129, Boise ID 83707-1129  
Phone: 208-334-8810, FAX: 208-334-8195

**IDAPA 39, TITLE 03, Chapter 42**

**RULES GOVERNING USE OF RIGHT-OF-WAY ENCROACHMENTS**  
**ON STATE HIGHWAY RIGHTS-OF-WAY**

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

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-5, May 2, 2001, pages 53 through 55.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.**

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0104**

**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Sections 39-105 and 39-107. The collection of fees is authorized by Sections 39-115(3) and 39-119, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**October 9, 2001, 7 p.m.**  
**Department of Environmental Quality Conference Center**  
**1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** Economic growth in Idaho has resulted in a corresponding rise in the air quality permitting needs of the regulated community. The purpose of the rulemaking is to better match the level of funding available to the Department of Environmental Quality (DEQ) air quality permitting program to the level of permit applications received. The fee will support, in part, the costs to DEQ of processing applications for permits to construct (PTCs) and Tier II operating permits, and registrations for permits by rule, allowing the agency to better meet the needs of the regulated community. Persons proposing or operating existing stationary sources of air pollutant emissions and required to obtain construction or operating permits may be affected by the rule.

As proposed, the rule adopts a permit to construct application fee, as well as processing fee schedules for calculating permit to construct and Tier II operating permit processing fees. The rule also includes a registration fee for owners of qualified facilities opting to register with DEQ under Sections 790 through 799 in lieu of obtaining an individual permit. The fee schedules are structured to provide an incentive for emission reduction as required by Section 39-115(3), Idaho Code. This rulemaking also includes nonsubstantive corrections to rule section references within the rule chapter.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2001 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

**FEE SUMMARY:** This rulemaking will establish a permit to construct application fee, schedules for processing fees for permits to construct and Tier II operating permits, and a permit by rule registration fee for nonmetallic mineral processing plants. Collection of the fees is authorized by Sections 39-115(3) and 39-119, Idaho Code.

**NEGOTIATED RULEMAKING:** The text of the rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 04.11.01.812 through 815. The negotiation was open to the public. Participants in the negotiation included government and industry representatives. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 01-6, June 6, 2001, page 93.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Phyllis Heitman, (208)373-0502, [pheitman@deq.state.id.us](mailto:pheitman@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 9, 2001.

Dated this 18th day of July, 2001.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
pgradwoh@deq.state.id.us

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0104**

**006. GENERAL DEFINITIONS.**

**01. Accountable.** Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance. (4-5-00)

**02. Act.** The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)

**03. Actual Emissions.** The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following: (4-5-00)

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. (4-5-00)

b. The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. (4-5-00)

c. For any emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. (4-5-00)

d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations. (4-5-00)

**04. Air Pollutant/Air Contaminant.** Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof. (4-5-00)

**05. Air Pollution.** The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (4-5-00)

**06. Air Quality.** The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)

**07. Air Quality Criterion.** The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)

**08. Allowable Emissions.** The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: (4-5-00)

a. The applicable standards set forth in 40 CFR part 60 and 61; (4-5-00)

b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or (4-5-00)

c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. (4-5-00)

**09. Ambient Air.** That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)

**10. Ambient Air Quality Violation.** Any ambient concentration of any regulated air pollutant that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. (4-5-00)

**11. Atmospheric Stagnation Advisory.** An air pollution alert declared by the Department when regulated air pollutant impacts have been observed and/or meteorological conditions are conducive to additional regulated air pollutant buildup. (4-5-00)

**12. Attainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular regulated air pollutant or air pollutants. (4-5-00)

**13. Baseline (Area, Concentration, Date).** See Section 579. (5-1-94)

**14. Best Available Control Technology (BACT).** An emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major facility or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such proposed major facility or major modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any regulated air pollutant which would exceed the emission allowed by any applicable standard under 40 CFR Parts 60 and 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emission unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such

standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. (4-5-00)

15. **Board.** Idaho Board of Environmental Quality. (5-1-94)
16. **Breakdown.** An unplanned failure of any equipment or emissions unit which may cause excess emissions. (4-5-00)
17. **BTU.** British thermal unit. (5-1-94)
18. **Clean Air Act.** The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
19. **Collection Efficiency.** The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
20. **Commence Construction Or Modification.** In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. (4-5-00)
21. **Complete.** A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
22. **Construction.** Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
23. **Control Equipment.** Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
24. **Controlled Emission.** An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
25. **Criteria Air Pollutant.** Any of the following: PM-10; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. (4-5-00)
26. **Department.** The Department of Environmental Quality. (5-1-94)
27. **Designated Facility.** Any of the following facilities: (5-1-94)
  - a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
  - b. Coal cleaning plants (thermal dryers); (5-1-94)
  - c. Kraft pulp mills; (5-1-94)
  - d. Portland cement plants; (5-1-94)
  - e. Primary zinc smelters; (5-1-94)
  - f. Iron and steel mill plants; (5-1-94)
  - g. Primary aluminum ore reduction plants; (5-1-94)

- h. Primary copper smelters; (5-1-94)
- i. Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
- j. Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
- k. Petroleum refineries; (5-1-94)
- l. Lime plants; (5-1-94)
- m. Phosphate rock processing plants; (5-1-94)
- n. Coke oven batteries; (5-1-94)
- o. Sulfur recovery plants; (5-1-94)
- p. Carbon black plants (furnace process); (5-1-94)
- q. Primary lead smelters; (5-1-94)
- r. Fuel conversion plants; (5-1-94)
- s. Sintering plants; (5-1-94)
- t. Secondary metal production facilities; (5-1-94)
- u. Chemical process plants; (5-1-94)
- v. Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x. Taconite ore processing facilities; (5-1-94)
- y. Glass fiber processing plants; and (5-1-94)
- z. Charcoal production facilities. (5-1-94)
- 28. Director.** The Director of the Department of Environmental Quality or his designee. (5-1-94)
- 29. Effective Dose Equivalent.** The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)
- 30. Emission.** Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)
- 31. Emission Standard.** A permit or regulatory requirement established by the Department or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction. (4-5-00)

- 32. Emissions Unit.** An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)
- 33. EPA.** The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)
- 34. Environmental Remediation Source.** A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. (5-1-95)
- 35. Excess Emissions.** Emissions of any regulated air pollutant exceeding an applicable emissions standard established for any facility, source or emissions unit by statute, regulation, rule, permit, or order. (4-5-00)
- 36. Existing Stationary Source Or Facility.** Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)
- 37. Facility.** All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual. (4-5-00)
- 38. Federal Class I Area.** Any federal land that is classified or reclassified "Class I" pursuant to Section 580. (5-1-94)
- 39. Federal Land Manager.** The Secretary of the federal department with authority over any federal lands in the United States. (5-1-94)
- 40. Fire Hazard.** The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)
- 41. Fuel-Burning Equipment.** Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)
- 42. Fugitive Dust.** Fugitive emissions composed of particulate matter. (5-1-94)
- 43. Fugitive Emissions.** Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)
- 44. Garbage.** Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)
- 45. Grain Elevator.** Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)
- 46. Grain Storage Elevator.** Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). (5-1-94)
- 47. Grain Terminal Elevator.** Any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at

animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)

**48. Hazardous Air Pollutant (HAP).** Any air pollutant listed in or pursuant to Section 112(b) of the Clean Air Act. (4-5-00)

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

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

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

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

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

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

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

**54. Lowest Achievable Emission Rate (LAER).** For any source, the more stringent rate of emissions based on the following: (4-5-00)

a. The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or (4-5-00)

b. The most stringent emissions limitation which is achieved in practice by such class or category of facilities. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the facility. In no event shall the application of the term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. (4-5-00)

**55. Major Facility.** (5-1-94)

a. A major facility is either: (4-5-00)

i. Any facility which emits, or has the potential to emit, one hundred (100) tons per year or more of any regulated air pollutant; or (4-5-00)

ii. Any physical change that would occur at a facility not qualifying under Subsection 006.55.a.i. as a

major facility, if the change would constitute a new major facility by itself. (4-5-00)

b. A major facility that is major for volatile organic compounds shall be considered major for ozone. (4-5-00)

c. The fugitive emissions of a facility shall not be included in determining for any of the purposes of this Section whether it is a major facility, unless the source is a designated facility or the source belongs to a stationary source category which, as of August 7, 1980, is being regulated under Sections 111 or 112 of the Clean Air Act. (4-5-00)

**56. Major Modification.** (5-1-94)

a. Any physical change or change in the method of operation of a major facility that would result in a significant net emissions increase of any regulated air pollutant. (4-5-00)

b. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone. (4-5-00)

c. A physical change or change in the method of operation shall not include: (4-5-00)

i. Routine maintenance, repair, and replacement; (4-5-00)

ii. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act; (4-5-00)

iii. Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act; (4-5-00)

iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste; (4-5-00)

v. Use of an alternative fuel or raw material by a facility which the facility was capable of accommodating before December 21, 1976 for facilities located in nonattainment areas or before January 6, 1975 for facilities located in attainment or unclassified areas, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 for facilities located in nonattainment areas or before January 6, 1975 for facilities located in attainment or unclassified areas or under any permit issued by the Department or EPA; (4-5-00)

vi. An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 12, 1976 for facilities located in nonattainment areas or before January 6, 1975 for facilities located in attainment or unclassified areas. (4-5-00)

vii. Any change in ownership at a facility; (4-5-00)

viii. The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the Department determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except when the Department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that facility in the most recent air quality impact analysis in the area conducted for the purpose of Title I, if any, and the Department determines that the increase will cause or contribute to a violation of any national ambient air quality standard or prevention of significant deterioration (PSD) increment, or visibility limitation; (4-5-00)

ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the State Implementation Plan for the state in which the project is located, and other requirements necessary to maintain the national ambient air quality standard during the project and after it is terminated. (4-5-00)

**57. Member Of The Public.** For purposes of Subsection 006.92.a.xxi., a person located at any off-site point where there is a residence, school, business or office. (4-5-00)

**58. Modification.** Any physical change in, or change in the method of operation of, a stationary source or facility which increases the amount of any regulated air pollutant emitted by such stationary source or facility or which results in the emission of any regulated air pollutant not previously emitted except that routine maintenance, repair and replacement shall not be considered physical changes, and the following shall not be considered a change in the method of operation: (4-5-00)

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

b. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)

c. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material and use of such fuel or raw material is not specifically prohibited in a permit. (4-5-00)

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

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

**61. New Stationary Source Or Facility.** (5-1-94)

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

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

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

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

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

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

**64. Odor.** The sensation resulting from stimulation of the human sense of smell. (5-1-94)

- 65. Opacity.** A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)
- 66. Open Burning.** The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)
- 67. Operating Permit.** A permit issued by the Director pursuant to Sections 300 through 386 and/or 400 through 461. (4-5-00)
- 68. Particulate Matter.** Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)
- 69. Particulate Matter Emissions.** All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method in accordance with Section 157. (4-5-00)
- 70. Permit to Construct.** A permit issued by the Director pursuant to Sections 200 through 2238. ~~(4-5-00)~~(\_\_\_\_)
- 71. Person.** Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)
- 72. PM-10.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)
- 73. PM-10 Emissions.** All particulate matter, including condensable particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. (4-5-00)
- 74. Potential To Emit/Potential Emissions.** The maximum capacity of a facility to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit an air pollutant, provided the limitation or its effect on emissions is state or federally enforceable, shall be treated as part of its design. Limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation and restrictions on the type or amount of material combusted, stored or processed. This definition does not alter or affect the term "capacity factor" as defined in 42 U.S.C. Sections 7651 through 7651o. (4-5-00)
- 75. Portable Equipment.** Equipment which is designed to be dismantled and transported from one (1) job site to another job site. (5-1-94)
- 76. PPM (parts per million).** Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)
- 77. Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)
- a. Fire hazard reduction; (5-1-94)
  - b. The control of pests, insects, or diseases; (5-1-94)
  - c. The promotion of range forage improvements; (5-1-94)
  - d. The perpetuation of natural ecosystems; (5-1-94)

e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)

f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)

g. Other accepted natural resource management purposes. (5-1-94)

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

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

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

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

a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (4-5-00)

b. For cyclical or batch source operations, the total process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (4-5-00)

**82. Quantifiable.** The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (4-5-00)

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

**84. Regulated Air Pollutant.** The following air pollutants: (4-5-00)

a. Nitrogen oxides or any volatile organic compounds. (4-5-00)

b. Any pollutant for which a national ambient air quality standard has been promulgated. (4-5-00)

c. Any pollutant that is subject to any standard promulgated under 42 U.S.C. Section 7411. (4-5-00)

d. Any Class I or II substance subject to a standard promulgated under or established under 42 U.S.C. Sections 7671a(a) or 7671a(b). (4-5-00)

e. Any air pollutant subject to a standard promulgated under 42 U.S.C. Section 7412 or other requirements established under 42 U.S.C. Section 7412, including 42 U.S.C. Section 7412(g), (j), and (r), including the following: (4-5-00)

i. Any air pollutant subject to requirements under 42 U.S.C. Section 7412(j). If the EPA fails to promulgate a standard by the date established pursuant to 42 U.S.C. Section 7412(e), any air pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen (18) months after the applicable date established pursuant to 42 U.S.C. Section 7412(e); and (4-5-00)

ii. Any air pollutant for which the requirements of 42 U.S.C. Section 7412(g)(2) have been met, but only with respect to the individual source subject to 42 U.S.C. Section 7412(g)(2) requirement. (4-5-00)

f. Any air pollutant listed in Sections 585, 586, or subject to regulation pursuant to Section 161. Unless otherwise listed in Subsections 006.84.a. through 006.84.e., these pollutants do not constitute regulated air pollutants for purposes of Sections 300 ~~through 386 and 526~~ through ~~538~~ 399. ~~(4-5-00)~~( )

**85. Replicable.** Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. (4-5-00)

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

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

i. The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or (4-5-00)

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

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

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 123, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (4-5-00)

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

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

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

**87. Safety Measure.** Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. (4-5-00)

**88. Salvage Operation.** Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

**89. Scheduled Maintenance.** Planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (3-20-97)

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

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

**92. Significant.** A rate of regulated air pollutant emissions that would equal or exceed any of the following: (4-5-00)

- a. Air pollutant emissions and rate: (5-1-94)
  - i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)
  - ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)
  - iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
  - iv. Particulate matter, twenty-five (25) tons per year; (5-1-94)
  - v. Ozone, forty (40) tons per year of volatile organic compounds as a measure of ozone; (5-1-94)
  - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
  - vii. Asbestos, seven-thousandths (0.007) of a ton per year; (5-1-94)
  - viii. Beryllium, four ten-thousandths (0.0004) of a ton per year; (5-1-94)
  - ix. Mercury, one-tenth (0.1) of a ton per year; (5-1-94)
  - x. Vinyl chloride, one (1) ton per year; (5-1-94)
  - xi. Fluorides, three (3) tons per year; (5-1-94)
  - xii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
  - xiii. Hydrogen sulfide (H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xiv. Total reduced sulfur (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xv. Reduced sulfur compounds (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xvi. PM-10, fifteen (15) tons per year; (5-1-94)
  - xvii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.000035) tons per year; (5-1-94)
  - xviii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
  - xix. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
  - xx. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year; (4-5-00)
  - xxi. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least one tenth (0.1) mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3)

mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year. (5-1-95)

b. In reference to a net emissions increase or the potential of a source or facility to emit a regulated air pollutant not listed in Subsection 006.92.a. above and not a toxic air pollutant, any emission rate; or (4-5-00)

c. For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (4-5-00)

**93. Significant Contribution.** Any increase in ambient concentrations which would exceed the following: (5-1-94)

a. Sulfur dioxide: (5-1-94)

i. One (1.0) microgram per cubic meter, annual average; (5-1-94)

ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)

iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)

b. Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)

c. Carbon monoxide: (5-1-94)

i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)

ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)

d. PM-10: (5-1-94)

i. One (1.0) microgram per cubic meter, annual average; (5-1-94)

ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average. (5-1-94)

**94. Small Fire.** A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)

**95. Smoke.** Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)

**96. Smoke Management Plan.** A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)

**97. Smoke Management Program.** A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)

**98. Source.** A stationary source. (5-1-94)

**99. Source Operation.** The last operation preceding the emission of air pollutants, when this operation: (5-1-94)

a. Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)

- b. Is not an air cleaning device. (5-1-94)
- 100. Stack.** Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)
- 101. Standard Conditions.** Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) sixty-eight degrees Fahrenheit (68F) and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. (4-5-00)
- 102. Startup.** The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)
- 103. Stationary Source.** Any building, structure, emissions unit, or installation which emits or may emit any air pollutant. (4-5-00)
- 104. Tier I Source.** Any of the following: (5-1-94)
- a. Any source located at any major facility as defined in Section 008; (4-5-00)
- b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60; (5-1-94)
- c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (5-1-94)
- d. Any Phase II source; and (5-1-94)
- e. Any source in a source category designated by the Department. (5-1-94)
- 105. Total Suspended Particulates.** Particulate matter as measured by the method described in 40 CFR 50 Appendix B. (4-5-00)
- 106. Toxic Air Pollutant.** An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)
- 107. Toxic Air Pollutant Carcinogenic Increments.** Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one (1) microgram per cubic meter (1 ug/m<sup>3</sup>) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)
- 108. Toxic Air Pollutant Non-carcinogenic Increments.** Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)
- 109. Toxic Substance.** Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)
- 110. Trade Waste.** Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)
- 111. TRS (Total Reduced Sulfur).** Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)
- 112. Unclassifiable Area.** An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

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

**114. Upset.** An unplanned disruption in the normal operations of any equipment or emissions unit which may cause excess emissions. (4-5-00)

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

**116. Wood Stove Curtailment Advisory.** An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)

**007. DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 223~~8~~ AND 400 THROUGH 461.**

**01. Adverse Impact On Visibility.** Visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: (4-5-00)

- a. Times of visitor use of the Federal Class I area; and (4-5-00)
- b. The frequency and timing of natural conditions that reduce visibility. (4-5-00)
- c. This term does not include affects on integral vistas. (4-5-00)

**02. Agricultural Activities And Services.** For the purposes of Subsection 223.03.f., the usual and customary activities of cultivating the soil, producing crops and raising livestock for use and consumption. Agricultural activities and services do not include manufacturing, bulk storage, handling for resale or the formulation of any agricultural chemical listed in Sections 585 or 586. (5-1-94)

**03. Innovative Control Technology.** Any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental effects. (5-1-94)

**04. Integral Vista.** A view perceived from within the mandatory federal Class I area of a specific landmark or panorama located outside the boundary of the mandatory federal Class I area. Integral vistas are identified by the responsible federal land manager in accordance with criteria adopted pursuant to 40 CFR Part 51.304(a). (5-1-94)

**05. Mandatory Federal Class I Area.** Any area designated under 42 U.S.C. Section 7472(a) as Class I and never to be redesignated. (5-1-94)

**06. Net Emissions Increase.** Any increase in actual emissions from a particular modification plus any other increases and decreases in actual emissions at the facility that are creditable and contemporaneous with the particular modification, where: (4-5-00)

a. A creditable increase or decrease in actual emissions is contemporaneous with a particular modification if it occurs between the date five (5) years before the commencement of construction or modification on the particular change and the date that the increase from the particular modification occurs. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred and eighty (180) days; (4-5-00)

b. A decrease in actual emissions is creditable only if it satisfies the requirements for emission reduction credits (Section 460) and has approximately the same qualitative significance for public health and welfare

as that attributed to the increase from the particular modification, and is federally enforceable at and after the time that construction of the modification commences. (4-5-00)

c. The increase in toxic air pollutant emissions from an already operating or permitted source is not included in the calculation of the net emissions increase for a proposed new source or modification if: (5-1-95)

i. The already operating or permitted source commenced construction or modification prior to July 1, 1995; or (5-1-95)

ii. The uncontrolled emission rate from the already operating or permitted source is ten per cent (10%) or less of the applicable screening emissions level listed in Section 585 or 586; or (6-30-95)

iii. The already operating or permitted source is an environmental remediation source subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order. (6-30-95)

**07. Pilot Plant.** A stationary source located at least one quarter (1/4) mile from any sensitive receptor that functions to test processing, mechanical, or pollution control equipment to determine full-scale feasibility and which does not produce products that are offered for sale except in developmental quantities. (5-1-94)

**08. Reasonable Further Progress (RFP).** Annual incremental reductions in emissions of the applicable regulated air pollutant as identified in the SIP which are sufficient to provide for attainment of the applicable ambient air quality standard by the required date. (4-5-00)

**09. Secondary Emissions.** Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. (4-5-00)

**10. Sensitive Receptor.** Any residence, building or location occupied or frequented by persons who, due to age, infirmity or other health based criteria, may be more susceptible to the deleterious effects of a toxic air pollutant than the general population including, but not limited to, elementary and secondary schools, day care centers, playgrounds and parks, hospitals, clinics and nursing homes. (5-1-94)

**11. Short Term Source.** Any new stationary source or modification to an existing source, with an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. (5-1-94)

**12. Toxic Air Pollutant Reasonably Available Control Technology (T-RACT).** An emission standard based on the lowest emission of toxic air pollutants that a particular source is capable of meeting by the application of control technology that is reasonably available, as determined by the Department, considering technological and economic feasibility. If control technology is not feasible, the emission standard may be based on the application of a design, equipment, work practice or operational requirement, or combination thereof. (5-1-94)

**13. Visibility Impairment.** Any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions. (4-5-00)

*(BREAK IN CONTINUITY OF SECTIONS)*

**200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.**

The purposes of Sections 200 through 223~~8~~ is to establish uniform procedures and requirements for the issuance of "Permits to Construct." (4-5-00)(\_\_\_\_)

**201. PERMIT TO CONSTRUCT REQUIRED.**

No owner or operator may commence construction or modification of any stationary source, facility, major facility, or major modification without first obtaining a permit to construct from the Department which satisfies the requirements of Sections 200 through 223~~8~~ unless the source is exempted in any of Sections 220 through 223, the owner or operator complies with Section 213 and obtains the required permit to construct, or the source operates in accordance with all of the applicable provisions of a permit by rule. (6-15-01)F(\_\_\_\_)

**202. APPLICATION PROCEDURES.**

Application for a permit to construct must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official in accordance with Section 123 and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 200 through 223~~8~~. (4-5-00)(\_\_\_\_)

**01. Required Information.** Depending upon the proposed size and location of the new or modified stationary source or facility, the application for a permit to construct shall include all of the information required by one or more of the following provisions: (5-1-94)

- a. For any new or modified stationary source or facility: (5-1-94)
  - i. Site information, plans, descriptions, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. (5-1-94)
  - ii. A schedule for construction of the stationary source, facility, or modification. (5-1-94)
- b. For any new major facility or major modification in a nonattainment area which would be major for the nonattainment regulated air pollutant(s): (4-5-00)
  - i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the lowest achievable emission rate would be applied. (5-1-94)
  - ii. A description of the emission offsets proposed for the new major facility or major modification, including information on the stationary sources, mobile sources, or facilities providing the offsets, emission estimates, and other information necessary to determine that a net air quality benefit would result. (4-5-00)
  - iii. Certification that all other facilities in Idaho, owned or operated by (or under common ownership of) the proposed new major facility or major modification, are in compliance with all local, state or federal requirements or are on a schedule for compliance with such. (5-1-94)
  - iv. An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that the benefits of the proposed major facility or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. (5-1-94)
  - v. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would impact (including the monitoring of visibility in any Class I area near the new major facility or major modification, if requested by the Department), except for those new major facilities and major modifications exempted by Subsection 204.04. (5-1-94)
- c. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant, except for those new major facilities and major modifications exempted under Subsection 205.04. (4-5-00)

- i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the best available control technology would be applied. (5-1-94)
- ii. An analysis of the effect on air quality by the new major facility or major modification, including meteorological and topographical data necessary to estimate such effects. (5-1-94)
- iii. An analysis of the effect on air quality projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new major facility or major modification. (5-1-94)
- iv. A description of the nature, extent, and air quality effects of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the new major facility or major modification would affect. (5-1-94)
- v. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new major facility or major modification and general commercial, residential, industrial, and other growth associated with establishment of the new major facility or major modification. The owner or operator need not provide an analysis of the impact on vegetation or soils having no significant commercial or recreational value. (5-1-94)
- vi. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would affect. (5-1-94)
- vii. An analysis of the existing ambient air quality in the area that the new major facility or major modification would affect for each regulated air pollutant that a new major facility would emit in significant amounts or for which a major modification would result in a significant net emissions increase. (4-5-00)
- viii. Ambient analyses as specified in Subsections 202.01c.vii., 202.01c.ix., 202.01c.x., and 202.01c.xii., may not be required if the projected increases in ambient concentrations or existing ambient concentrations of a particular regulated air pollutant in any area that the new major facility or major modification would affect are less than the following amounts, or the regulated air pollutant is not listed herein: carbon monoxide - five hundred and seventy-five (575) micrograms per cubic meter, eight (8) hour average; nitrogen dioxide - fourteen (14) micrograms per cubic meter, annual average; PM-10 - ten (10) micrograms per cubic meter, twenty-four (24) hour average; sulfur dioxide - thirteen (13) micrograms per cubic meter, twenty-four (24) hour average; ozone - any net increase of one hundred (100) tons per year or more of volatile organic compounds, as a measure of ozone; lead - one-tenth (0.1) of a microgram per cubic meter, calendar quarterly average; mercury - twenty-five hundredths (0.25) of a microgram per cubic meter, twenty-four (24) hour average; beryllium - one-thousandth (0.001) of a microgram per cubic meter, twenty-four (24) hour average; fluorides - twenty-five hundredths (0.25) of a microgram per cubic meter, twenty-four (24) hour average; vinyl chloride - fifteen (15) micrograms per cubic meter, twenty-four (24) hour average; hydrogen sulfide - two-tenths (0.2) of a microgram per cubic meter, one (1) hour average. (4-5-00)
- ix. For any regulated air pollutant which has an ambient air quality standard, the analysis shall include continuous air monitoring data, gathered over the year preceding the submittal of the application, unless the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year, but not less than four (4) months, which is adequate for determining whether the emissions of that regulated air pollutant would cause or contribute to a violation of the ambient air quality standard or any prevention of significant deterioration (PSD) increment. (4-5-00)
- x. For any regulated air pollutant which does not have an ambient air quality standard, the analysis shall contain such air quality monitoring data that the Department determines is necessary to assess ambient air quality for that air pollutant in any area that the emissions of that air pollutant would affect. (4-5-00)
- xi. If requested by the Department, monitoring of visibility in any Class I area the proposed new major facility or major modification would affect. (5-1-94)
- xii. Operation of monitoring stations shall meet the requirements of Appendix B to 40 CFR Part 58 or

such other requirements as extensive as those set forth in Appendix B as may be approved by the Department. (5-1-94)

**02. Estimates Of Ambient Concentrations.** All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51, Appendix W (Guideline on Air Quality Models). (4-5-00)

a. Where an air quality model specified in the "Guideline on Air Quality Models", is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 209.01.c.; provided that modifications and substitutions of models used for toxic air pollutants will be reviewed by the Department. (4-5-00)

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (Revised)" (September 1984) should be used to determine the comparability of air quality models. (5-1-94)

**03. Additional Information.** Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 200 through 225 shall be furnished upon request. (5-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**209. PROCEDURE FOR ISSUING PERMITS.**

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

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

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

i. Upon written request of the applicant, provide a draft permit for applicant review. Agency action on the permit under this Section may be delayed if deemed necessary to respond to applicant comments. (4-5-00)

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

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

c. An opportunity for public comment will be provided on all applications requiring a permit to construct. Public comment shall be provided on an application for any new major facility or major modification, any new facility or modification which would affect any Class I area, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516, any application which uses an interpollutant trade pursuant to Subsection 210.17, any application for a permit with a particulate matter emission standard requested pursuant to Subsection 710.10, any application which the Director determines an opportunity for public comment should be provided, and any application upon which the applicant so requests. (3-30-01)

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, or notice of public hearing if one is requested under Subsections 209.02.b.iv. or 209.02.a.ii., unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)

vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. (5-1-94)

d. A copy of each permit will be sent to the U.S. Environmental Protection Agency. (5-1-94)

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

a. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant, except for those new major facilities and major modifications exempted under Subsection 205.04. (4-5-00)

i. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the degree of increment consumption that is expected from the new major facility or major modification; and (5-1-94)

ii. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effects of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

b. For any new major facility or major modification which would affect a federal Class I area or an integral vista of a mandatory federal Class I area. (5-1-94)

i. If the Department is notified of the intent to apply for a permit to construct, it shall notify the appropriate Federal Land Manager within thirty (30) days; (5-1-94)

ii. A copy of the permit application and all relevant information, including an analysis of the anticipated effects on visibility in any federal Class I area, shall be sent to the Administrator of the U.S. Environmental Protection Agency and the Federal Land Manager within thirty (30) days of receipt of a complete application and at least sixty (60) days prior to any public hearing on the application; (5-1-94)

iii. Notice of every action related to the consideration of the permit shall be sent to the Administrator of the U.S. Environmental Protection Agency; (5-1-94)

iv. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effect of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be

requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

v. The notice of public hearing, if required, shall explain any differences between the Department's preliminary determination and any visibility analysis performed by the Federal Land Manager and provided to the Department within thirty (30) days of the notification pursuant to Subsection 209.02.b.ii. (5-1-94)

vi. Upon a sufficient showing by the Federal Land Manager that a proposed new major facility or major modification will have an adverse impact upon the air quality related values (including visibility) of any federal mandatory Class I area, the Director may deny the application notwithstanding the fact that the concentrations of regulated air pollutants would not exceed the maximum allowable increases for a Class I area. (4-5-00)

**03. Establishing A Good Engineering Stack Height.** The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

**04. Revisions Of Permits To Construct.** The Director may approve a revision of any permit to construct provided the stationary source or facility continues to meet all applicable requirements of Sections 200 through 223. Revised permits will be issued pursuant to procedures for issuing permits (Section 209), except that the requirements of Subsections 209.01.c., 209.02.a., and 209.02.b., shall only apply if the permit revision results in an increase in emissions authorized by the permit or if deemed appropriate by the Director. (~~4-5-00~~) ( )

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

a. Submit only the information required by Sections 200 through 219 for a permit to construct, in which case: (3-23-98)

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

ii. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (3-23-98)

iii. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02. (4-5-00)

iv. Unless a different time is prescribed by these rules, the applicable requirements contained in a permit to construct will be incorporated into the Tier I operating permit during renewal (Section 269). Where an existing Tier I permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation. Tier I sources required to meet the requirements under Section 112(g) of the Clean Air Act (Section 214), or to have a permit under the preconstruction review program approved into the applicable implementation plan under Part C (Section 205) or Part D (Section 204) of Title I of the Clean Air Act, shall file a complete application to obtain a Tier I permit revision within twelve (12) months after commencing operation. (3-19-99)

v. The application or minor or significant permit modification request shall be processed in accordance with timelines: Section 361 and Subsections 367.02 through 367.05. (3-19-99)

vi. The final Tier I operating permit action shall incorporate the relevant terms and conditions from the permit to construct; or (4-5-00)

b. Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 386 for a Tier I operating permit, or Tier I operating permit modification, in which case: (4-5-00)

- i. Completeness of the application shall be determined within thirty (30) days. (5-1-94)
- ii. The Department shall prepare a proposed permit to construct or denial in accordance with Sections 200 through 219 and a draft Tier I operating permit or Tier I operating permit modification in accordance with Sections 300 through 386 within sixty (60) days. (4-5-00)
- iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364 and 365 on the proposed permit to construct or denial and draft Tier I operating permit or Tier I operating permit modification. (4-5-00)
- iv. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial within fifteen (15) days of the close of the public comment period. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (4-5-00)
- v. The final permit to construct will be sent to EPA, along with the proposed Tier I operating permit or modification. The proposed Tier I operating permit or modification shall be sent for review in accordance with Section 366. (4-5-00)
- vi. The Tier I operating permit, or Tier I operating permit modification, will be issued in accordance with Section 367. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02; or (4-5-00)
- c. Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 381 for a Tier I operating permit, or Tier I operating permit modification, in which case: (4-5-00)
- i. Completeness of the application shall be determined within thirty (30) days. (4-5-00)
- ii. The Department shall prepare a draft permit to construct or denial in accordance with Sections 200 through 219 and that also meets the requirements of Sections 300 through 381 within sixty (60) days. (4-5-00)
- iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364, and 365 on the draft permit to construct or denial. (4-5-00)
- iv. The Department shall prepare and send a proposed permit to construct or denial to EPA for review in accordance with Section 366. EPA review of the proposed permit to construct or denial in accordance with Section 366 can occur concurrently with public comment and affected state review of the draft permit, as provided in Subsection 209.05.c.iii. above, except that if the draft permit or denial is revised in response to public comment or affected state review, the Department must send the revised proposed permit to construct or denial to EPA for review in accordance with Section 366. (4-5-00)
- v. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial in accordance with Section 367. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (4-5-00)
- vi. The permittee may, at any time after issuance, request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 381. The owner or operator may operate the source or modification upon submittal of the request for an administrative amendment. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**224. PERMIT TO CONSTRUCT APPLICATION FEE.**

All applicants for a permit to construct shall submit a permit to construct application fee of one thousand dollars (\$1,000) to the Department at the time of the original submission of the application. The permit to construct application fee is not required to be submitted for: ( )

**01. Exemption Applicability Determinations.** Exemption applicability determinations set forth in Sections 220 through 223: ( )

**02. Typographical Errors.** Changes to correct typographical errors; or ( )

**03. Name Change.** A change in the name of the holder of a permit to construct when no other review or analysis is required. ( )

**225. PERMIT TO CONSTRUCT PROCESSING FEE.**

A permit to construct processing fee, calculated by the Department pursuant to the categories provided in the following table, shall be paid to the Department by the person receiving the permit. The applicable processing fee category shall be determined by adding together the amount of increases of regulated pollutant emissions and subtracting any decreases of regulated pollutant emissions as identified in the permit to construct. The fee calculation shall not include fugitive emissions.

<b>PERMIT TO CONSTRUCT CATEGORY</b>	<b>FEE</b>
General permit, no facility-specific requirements	\$500
New source or modification to existing source with increase of emissions of less than one (1) ton per year	\$1,000
New source or modification to existing source with increase of emissions of one (1) to less than ten (10) tons per year	\$2,500
New source or modification to existing source with increase of emissions of ten (10) to less than one hundred (100) tons per year	\$5,000
New source or modification to existing source with increase of emissions of one hundred (100) tons per year or more exempt under Subsection 205.04	\$7,500
New major facility or major modification not exempt under Subsection 205.04.	\$10,000
Permit modifications where no engineering analysis is required	\$250

( )

**226. PAYMENT OF FEES FOR PERMITS TO CONSTRUCT.**

**01. Fee Submittal.** The permit to construct application fee shall be submitted with the application. The permit to construct processing fee shall be payable upon receipt of an assessment sent to the person receiving a permit by the Department. The permit to construct application and processing fees shall be sent to:

Air Quality Permit to Construct Fees  
Fiscal Office,  
Idaho Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706-1255

( )

**02. Delinquency.** No application for a permit to construct shall be processed by the Department unless accompanied by a permit to construct application fee. No permit to construct shall be issued by the Department until the Department has received the permit to construct processing fee. ( )

**227. RECEIPT AND USAGE OF FEES.**

Permit to construct application and processing fee receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used toward technical, legal and administrative support of the Department's air quality stationary source permit program except for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. The permit to construct application fee payable under Section 227 shall be retained by the Department regardless of whether a permit to construct is issued by the Department in response to an application. The Department will review the fee schedule at least every two (2) years. ( )

**228. APPEALS.**

A person may be able to file an appeal within thirty (30) days of the date the person receives an assessment from the Department under Section 225, in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". ( )

**2249. -- 299. (RESERVED).**

**300. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS.**

The purposes of Sections 300 through 38699 are to establish requirements and procedures for the issuance of Tier I operating permits. (~~3-19-99~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**322. STANDARD CONTENTS OF TIER I OPERATING PERMITS.**

All Tier I operating permits shall contain and the Department shall have the authority to impose, implement and enforce, the following elements for all permitted operating scenarios and emissions trading scenarios. Fugitive emissions shall be included in the Tier I operating permit in the same manner as stack emissions. (3-23-98)

**01. Emission Limitations And Standards.** All Tier I operating permits shall contain emission limitations and standards, including, but not limited to, those operational requirements and limitations that assure compliance with the applicable requirements identified in the application, or determined by the Department to be applicable to the source. (3-19-99)

**02. Authority For And Form Of Terms And Conditions.** All Tier I operating permits shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. (5-1-94)

**03. Terms Or Conditions For Applicable Requirements.** All Tier I operating permits shall contain at least one (1) permit term or condition for every applicable requirement specifically identified in the application or determined by the Department to be applicable to the source. (3-23-98)

**04. Alternative Operating Scenarios.** All Tier I operating permits shall contain terms and conditions to ensure compliance with all applicable requirements for each alternative operating scenario that was requested by the applicant and approved by the Department, including, but not limited to, a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) operating scenario to another, record the change in an operating scenario log located and retained at the permitted facility. (5-1-94)

**05. Trading Scenarios.** (5-1-94)

a. All Tier I operating permits shall contain terms and conditions for each trading scenario that was requested by the applicant and approved by the Department including, but not limited to, terms and conditions which ensure that any emission trade is quantifiable, accountable, enforceable and based on replicable procedures. (3-23-98)

b. The Tier I operating permit shall state that no permit revision shall be required under approved

economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit. (4-5-00)

c. The Tier I operating permit shall, at a minimum, include a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) trading scenario to another, record the change in a trading scenario log located and retained at the permitted facility and provide notice to the Department in accordance with Section 383. (3-23-98)

**06. Monitoring.** All Tier I operating permits shall contain the following with respect to monitoring: (5-1-94)

a. Sufficient monitoring to ensure compliance with all of the terms and conditions of the Tier I operating permit; (5-1-94)

b. All emissions monitoring and analysis procedures or test methods required under the applicable requirements; (5-1-94)

c. If the applicable requirement does not require specific periodic testing or monitoring, terms and conditions requiring periodic monitoring, recordkeeping, or both, that is sufficient to yield reliable data for the relevant time periods that are representative of the emissions unit's compliance with the Tier I operating permit, as reported pursuant to Subsection 322.08, and ensuring the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and (5-1-94)

d. Requirements that the Department determines are necessary, concerning the use, maintenance and installation of monitoring equipment or methods. (5-1-94)

**07. Recordkeeping.** All Tier I operating permits shall incorporate by reference all applicable requirements regarding recordkeeping and require all of the following: (5-1-94)

a. Sufficient recordkeeping to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)

b. Recording of monitoring information including but not limited to the following: (5-1-94)

i. The date, place (as defined in the Tier I operating permit) and time of sampling or measurements; (5-1-94)

ii. The date(s) analyses were performed; (5-1-94)

iii. The company or entity that performed the analyses; (5-1-94)

iv. The analytical techniques or methods used; (5-1-94)

v. The results of such analyses; and (5-1-94)

vi. The operating conditions existing at the time of sampling or measurement. (5-1-94)

c. Retention of all monitoring records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Supporting information includes but is not limited to all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the Tier I operating permit. (5-1-94)

**08. Reporting.** All Tier I operating permits shall incorporate by reference all applicable requirements regarding reporting and require all of the following: (5-1-94)

a. Sufficient reporting to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)

b. Prompt reporting of deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. (3-23-98)

c. Submittal of reports for any required monitoring at least every six (6) months. All instances of deviations from Tier I operating permit requirements, which include monitoring, recordkeeping, and reporting, must be clearly identified in such reports. All required reports must be certified in accordance with Section 123. (4-5-00)

**09. Testing.** All Tier I operating permits shall contain terms and conditions requiring sufficient testing to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)

**10. Compliance Schedule and Progress Reports.** All Tier I operating permits shall contain terms and conditions regarding the compliance plan submitted in the application in accordance with Subsection 314.10 including all of the following: (4-5-00)

a. For each applicable requirement for which the source is not in compliance at the time of the permit issuance, terms and conditions consistent with the compliance schedule submitted by the applicant including all of the following: (4-5-00)

i. A schedule of remedial measures leading to compliance including an enforceable sequence of actions and specific dates for achieving the milestones and achieving compliance. (4-5-00)

ii. A requirement that the permittee submit periodic progress reports to the Department no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying applicable requirement or by the Department. (5-1-94)

iii. A requirement that any progress report shall include a statement of when the milestones and compliance were or will be achieved, an explanation of why any dates in the compliance schedule submitted by the applicant or in the terms or conditions of the Tier I operating permit were not or will not be met and a detailed description of any preventative or corrective measures undertaken by the permittee. (5-1-94)

iv. All terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)

v. A statement that the terms and conditions regarding the compliance schedule are supplemental to, and do not sanction noncompliance with, the underlying applicable requirement. (5-1-94)

b. For each applicable requirement that will become effective during the term of the Tier I operating permit and that requires a detailed compliance schedule, the permit shall include such compliance schedule. (4-5-00)

c. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not require a detailed compliance schedule, the permit shall include a statement that the permittee shall meet, on a timely basis, all such applicable requirements. (4-5-00)

**11. Periodic Compliance Certifications.** Each Tier I operating permit shall require submittal of compliance certifications during the term of the permit for each emissions unit to the Department and the EPA as follows: (5-1-94)

a. Compliance certifications for all emissions units shall be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)

b. The compliance certification for each emissions unit shall address all of the terms and conditions contained in the Tier I operating permit that are applicable to such emissions unit including emissions limitations, standards and work practices. (5-1-94)

- c. The compliance certification shall be in an itemized format providing the following information: (5-1-94)
- i. The identification of each term or condition of the Tier I operating permit that is the basis of the certification; (4-5-00)
- ii. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required by the Tier I operating permit. If necessary, the owner or operator shall identify any other material information that must be included in the certification to comply with Section 113(c)(2) of the Clean Air Act which prohibits knowingly making a false certification or omitting material information; (4-5-00)
- iii. The status of compliance with the terms and conditions of the Tier I operating permit for the period covered by certification, based on the method or means designated in Subsection 322.11.c.ii. above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and (4-5-00)
- iv. Such information as the Department may require to determine the compliance status of the emissions unit. (4-5-00)
- d. All original compliance certifications shall be submitted to the Department and a copy of all compliance certifications shall be submitted to the EPA; (5-1-94)
- 12. Permit Conditions Regarding Acid Rain Allowances.** (5-1-94)
- a. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds. (5-1-94)
- b. No limit shall be placed on the number of allowances held by the source and no permit revisions shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement. (3-23-98)
- c. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement. (5-1-94)
- d. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 72 and 40 CFR Part 73. (5-1-94)
- 13. Permit Duration.** Each Tier I operating permit shall state that it is effective for a fixed term of five (5) years; except that during the first four (4) years after EPA approval of the Tier I operating permit program, the permit may be issued with an initial term of three (3) years to five (5) years unless the Tier I source is also a Phase II source. (5-1-94)
- 14. Other Specific Requirements.** Any terms or conditions determined by the Department to be necessary for approval of the Tier I operating permit. (5-1-94)
- 15. General Requirements.** Each Tier I operating permit shall contain provisions stating the following: (5-1-94)
- a. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation and is grounds for enforcement action; for permit revocation, termination, revocation and reissuance, or revision; or for denial of a permit renewal application. (5-1-94)

- b. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce any activity in order to maintain compliance with the terms and conditions of this permit. (5-1-94)
- c. This permit may be revised, revoked, reopened and reissued, or terminated for cause. (5-1-94)
- d. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition. (5-1-94)
- e. This permit does not convey any property rights of any sort, or any exclusive privilege. (5-1-94)
- f. The permittee shall furnish all information requested by the Department, within a reasonable time, that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing or terminating the permit or to determine compliance with the permit. (4-5-00)
- g. Upon request, the permittee shall furnish to the Department copies of records required to be kept by this permit. (5-1-94)
- h. The provisions of this permit are severable, and if any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby. (5-1-94)
- i. The permittee shall comply with Sections 380 through 386 as applicable. (3-19-99)
- j. Unless specifically identified as a "State Only" provision, all terms and conditions in the this permit, including any terms and conditions designed to limit a source's potential to emit, are enforceable: (5-1-94)
- i. By the Department in accordance with State law; and (5-1-94)
- ii. By the United States or any other person in accordance with Federal law. (5-1-94)
- k. Provisions specifically identified as a "State Only" provision are enforceable only in accordance with State law. "State Only" provisions are those that are not required under the Federal Clean Air Act or under any of its applicable requirements or those provisions adopted by the State prior to federal approval. (3-23-98)
- l. Upon presentation of credentials, the permittee shall allow the Department or an authorized representative of the Department to do the following: (5-1-94)
- i. Enter upon the permittee's premises where a Tier I source is located or emissions-related activity is conducted, or where records are kept under the conditions of this permit; (5-1-94)
- ii. Have access to and copy, at reasonable times, any records that are kept under the conditions of this permit; (5-1-94)
- iii. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit; and (5-1-94)
- iv. Sample or monitor at reasonable times substances or parameters for the purpose of determining or ensuring compliance with this permit or applicable requirements. (5-1-94)
- m. Nothing in this permit shall alter or affect the following: (5-1-94)
- i. Any administrative authority or judicial remedy available to prevent or terminate emergencies or imminent and substantial dangers; (5-1-94)
- ii. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; (5-1-94)

- iii. The applicable requirements of the acid rain program, consistent with 42 U.S.C. Section 7651g(a); (5-1-94)
- iv. The owner or operator's duty to provide information. (5-1-94)
- n. The owner or operator of a Tier I source shall pay registration fees to the Department in accordance with Sections ~~525~~ 387 through ~~538~~ 399, which are hereby incorporated by reference. (~~5-1-94~~)(\_\_\_\_)
- o. All documents submitted to the Department shall be certified in accordance with Section 123 and comply with Section 124. (5-1-94)
- p. If a timely and complete application for a Tier I operating permit renewal is submitted, but the Department fails to issue or deny the renewal permit before the end of the term of the previous permit, then all the terms and conditions of the previous permit including any permit shield that may have been granted pursuant to Section 325 shall remain in effect until the renewal permit has been issued or denied. (5-1-94)
- q. The permittee shall promptly report deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. (3-23-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**380. CHANGES TO TIER I OPERATING PERMITS.**

**01. Applicability.** Sections 380 through ~~386~~99 establish procedures and requirements for permit revisions and changes requiring notice. These provisions do not alter the requirements for permits to construct set forth at Sections 200 through ~~223~~8. (~~4-5-00~~)(\_\_\_\_)

**02. Changes Requiring Permit Revisions.** Sections 381 through 383 establish procedures and requirements for Tier I operating permit revisions. A permit revision is required for changes that are not addressed or prohibited by the Tier I operating permit if such changes are subject to any requirements under Title IV of the Clean Air Act or are modifications under any provision of Title I of the Clean Air Act. (4-5-00)

**03. Changes Requiring Notice.** Sections 384 and 385 establish procedures and requirements for providing notice by the permittee to the Department and EPA of certain emission trades and changes that contravene a permit term (Section 384), or certain changes that are not addressed or prohibited by the permit (Section 385). (3-19-99)

**04. Reopening.** Section 386 establishes procedures for reopening the permit for cause by the Department, EPA, or the permittee. (3-19-99)

**05. Acid Rain.** Changes regulated under Title IV of the Clean Air Act, 42 U.S.C. Sections 7651 through 7651o, shall be governed by regulations promulgated under Title IV of the Act. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~387. 399.~~ (~~RESERVED~~).

**~~525~~387. REGISTRATION AND REGISTRATION FEES.**

The purpose of Sections ~~525~~ 387 through ~~538~~ 399 is to establish criteria for the registration of emissions and the payment of fees for Tier I permits. The fee structure is to provide flexibility and financial stability to the Department program. (~~3-30-01~~)(\_\_\_\_)

**~~526~~388. APPLICABILITY.**

In any given year, Sections ~~525~~ 387 through ~~538~~ 399 shall apply to all major facilities, as defined in Section 008. Facilities, sources and emissions exempt under Section 301 are not required to register or pay fees. (~~4-5-00~~)(\_\_\_\_)

**~~527~~389. REGISTRATION.**

Any person owning or operating a facility or source for which Sections ~~525~~ 387 through ~~538~~ 399 applies shall, by May 1, 1993 and each May 1 thereafter register with the Department and submit the following: (~~5-1-94~~)(\_\_\_\_)

- 01. Facility Information.** The name, address, telephone number and location of the facility; (5-1-94)
- 02. Owner/Operator Information.** The name, address and telephone numbers of the owners and operators; (5-1-94)
- 03. Facility Emission Units.** The number and type of emission units present at the facility or the Tier I permit number for the facility; (3-19-99)
- 04. Pollutant Registration.** The emissions from the previous calendar year, or other twelve (12) month period requested by the registrant and approved by the Department for oxides of sulfur (SOx), oxides of nitrogen (NOx), particulate matter and volatile organic compounds (VOC) based on one (1) or more of the following methods chosen by the registrant: (3-19-99)
  - a. Actual annual emissions; (3-19-99)
  - b. An estimate of the actual annual emissions calculated using the unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year; (3-19-99)
  - c. Allowable emissions based on permit limitations. (3-19-99)
- 05. Radionuclide Registration.** The amount of radionuclides from facilities regulated under 40 CFR Part 61, Subpart H, for which the registrant wishes to be registered to emit from each source in curies per year except that no amount in excess of or less than an existing permit, consent order, or judicial order will be allowed. (5-1-94)
- 06. Regulated Air Pollutant Registration Fee.** The registration fee set out in Subsection ~~527~~389.06 shall be reviewed at least every two (2) years to assure the funds meet the presumptive minimum as defined by EPA. The annual registration fee set forth in Subsection ~~527~~389.06.a. may be paid in two (2) installments as provided in Subsection ~~522~~393.01. Fees for permit modifications or permit renewals in Subsection ~~527~~389.06.b. shall be submitted with the application. (~~3-30-01~~)(\_\_\_\_)
  - a. The Tier I annual fee schedule shall be as follows: (3-30-01)
    - i. A fixed annual fee for Tier I major sources with regulated air pollutants listed in Subsection ~~527~~389.04 emissions as follows: (~~3-30-01~~)(\_\_\_\_)
      - (1) Seven thousand (7,000) tons per year and above shall pay fifty thousand dollars (\$50,000); (3-30-01)
      - (2) Four thousand five hundred (4,500) tons per year and above shall pay thirty thousand dollars (\$30,000); (3-30-01)
      - (3) Three thousand (3,000) tons per year and above shall pay twenty thousand dollars (\$20,000); (3-30-01)

- (4) One thousand (1,000) tons per year and above shall pay fifteen thousand dollars (\$15,000); (3-30-01)
- (5) Five hundred (500) tons per year and above shall pay seven thousand five hundred dollars (\$7,500); (3-30-01)
- (6) Two hundred (200) tons per year and above shall pay five thousand dollars (\$5,000); and (3-30-01)
- (7) Less than two hundred (200) tons per year shall pay two thousand five hundred dollars (\$2,500); (3-30-01)
- plus
- ii. A per ton annual fee of thirty dollars (\$30) per ton for all regulated air pollutant emissions for Tier I major sources listed in Subsection ~~527389.04~~ as follows: (~~3-30-01~~)(\_\_\_\_)
- (1) Greater than or equal to four thousand five hundred (4,500) tons per year not to exceed one hundred thousand dollars (\$100,000); (3-30-01)
- (2) Greater than or equal to three thousand (3,000) but less than four thousand five hundred (4,500) tons per year not to exceed fifty thousand dollars (\$50,000); (3-30-01)
- (3) Greater than or equal to one thousand (1,000) but less than three thousand (3,000) tons per year not to exceed twenty five thousand dollars (\$25,000); (3-30-01)
- (4) Greater than or equal to five hundred (500) but less than one thousand (1,000) tons per year not to exceed seventeen thousand five hundred dollars (\$17,500); (3-30-01)
- (5) Greater than or equal to two hundred (200) but less than five hundred (500) tons per year not to exceed seven thousand five hundred dollars (\$7,500); and (3-30-01)
- (6) Less than two hundred (200) tons per year not to exceed two thousand five hundred dollars (\$2,500). (3-30-01)
- b. Sources requesting Section 300 permit modifications or renewals shall pay an additional fee. Fees shall be: (3-30-01)
- i. Permit renewal fee, ten thousand dollars (\$10,000); (3-30-01)
- ii. Fees for minor permit modifications as provided in Section 383 shall be one thousand dollars (\$1,000); and (3-30-01)
- iii. Fees for significant permit modifications as provided in Section 382 shall be five thousand dollars (\$5,000). (3-30-01)
- c. In the event the monies collected pursuant to Subsection ~~527389.06~~ fail to meet the presumptive minimum established by 40 CFR Part 70, any shortfall shall be expended from the Idaho air quality permitting fund as necessary in accordance with Section 39-118D(2), Idaho Code. (~~3-30-01~~)(\_\_\_\_)

**07. Radionuclide Registration Fee.** A registration fee of five dollars per curie per year (\$5/curie/year) for facilities regulated under 40 CFR Part 61, Subpart H. The registration fee may be paid in two (2) installments as provided in Subsection ~~532393.01~~. (~~5-1-94~~)(\_\_\_\_)

**~~528390~~. REQUEST FOR INFORMATION.**

Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections ~~525 387~~ through ~~538 399~~ shall be furnished on request. (~~5-1-94~~)(\_\_\_\_)

**~~530~~391. REGISTRATION FEE.**

All facilities to which this Section ~~530~~ 391 applies shall pay to the Department an annual registration fee as required by Subsections ~~527~~389.06 and ~~527~~389.07. The Department shall determine the fee based on the information supplied by the registrant and the Department's analysis and engineering and technical practice. In the event of a failure of a facility to submit pertinent registration information, the Department may calculate the fee and shall assess the facility the fee and the costs of calculating the fee. The Department may employ private contractors to determine the registration fee. ~~(3-7-95)~~L(\_\_\_\_)

**~~531~~392. REGISTRATION BY THE DEPARTMENT.**

Upon receiving registration materials from a facility, the Department shall: (5-1-94)

- 01. Completeness Review.** Review the material for accuracy and thoroughness; (5-1-94)
- 02. Additional Information.** Require the facility to submit additional information, if needed; and (5-1-94)
- 03. Fee Assessment.** Send to the registrant, by certified mail, an assessment of the fee and a receipt showing the amount of payment received by the Department. (5-1-94)

**~~532~~393. PAYMENT DUE.**

The registration fee shall be paid to and received by the Department: (5-1-94)

- 01. Annual Registration Payments.** Payment by May 1 of each year of at least fifty percent (50%) of the annual registration fee for the following twelve (12) months, the balance of the fee to be paid by August 1. (5-1-94)
- 02. Amendments In Registrations Fees.** Payment within forty-five (45) days of assessment or notification by the Department. (5-1-94)

**~~533~~394. EFFECT OF DELINQUENCY ON APPLICATIONS.**

No permit to construct or operate, other than those issued at the discretion of the Director, shall be accepted for processing, processed, or issued by the Department for any facility or to any person having fees delinquent in full or in part. (5-1-94)

**~~534~~395. APPEALS.**

Persons may file an appeal within thirty (30) days of the date the person received the assessment and receipt issued under Subsection ~~531~~392.03, or within thirty (30) days of the date the person received an assessment issued under Sections ~~530~~ 391 or ~~535~~ 396. The appeal shall be filed in accordance with *the Idaho Department of Health and Welfare Rules*, IDAPA 16.05.03, "*Rules Governing Contested Case Proceedings and Declaratory Rulings*" ~~58.01.23~~, "*Rules of Administrative Procedure Before the Board of Environmental Quality*". ~~(5-1-94)~~(\_\_\_\_)

**~~535~~396. AMENDING REGISTRATION.**

Registrations may be subject to amendment and additional or reduced fees: (5-1-94)

- 01. Department Or Owner Or Operator.** By the Department, or at the request of the owner or operator, should the Department determine that the emissions and fees do not accurately reflect the operation of the facility; or (5-1-94)
- 02. Board Of Environmental Quality.** By Action of the Board of Environmental Quality. (5-1-94)

**~~536~~397. CHECKS SHOULD BE MADE OUT TO "DEPARTMENT OF ENVIRONMENTAL QUALITY-AQ REGISTRATION FEE".**

All registration and fee materials should be sent to:

Air Quality Registration Fees  
Idaho Department of Environmental Quality  
1410 N. Hilton, Boise, Idaho 83706-1255 (5-1-94)

~~537~~398. EXEMPTIONS.

**01. Registration Fees.** The following facilities or sources are exempt from paying registration fees under Sections ~~525~~ 387 through ~~538~~ 399: ~~(5-1-94)~~(\_\_\_\_)

a. Facilities and sources specified by the Department, after public notice, as exempt from the payment of registration fees; and (5-1-94)

b. Country grain elevators. (5-1-94)

**02. Registering And Paying Fees.** The following facilities or sources are exempt from registering and paying registration fees under Sections ~~525~~ 387 through ~~538~~ 399: ~~(5-1-94)~~(\_\_\_\_)

a. Facilities and sources specified by the Department, after public notice, as exempt from registration and the payment of registration fees; (3-19-99)

b. Confined animal feeding operations; and (3-19-99)

c. Insignificant activities identified in Subsection 317.01. (3-19-99)

**03. Paying Fees.** The following emissions are exempt from registering and paying registration fees under Sections ~~525~~ 387 through ~~538~~ 399: ~~(3-7-95)~~L(\_\_\_\_)

a. Fugitive emissions from wood products. (3-7-95)L

b. Fugitive dust emissions, except facilities listed in Subsections 008.10.c.i. and 008.10.c.ii. Facilities listed in that section shall not be required to pay fees for fugitive dust emission in excess of one hundred (100) tons. (4-5-00)

~~538~~399. LUMP SUM PAYMENTS OF REGISTRATION FEES.

**01. Agreement.** The Department may, in its discretion, enter an agreement with any person for the lump sum payment of all, or any portion of, the registration fees required by Section ~~527~~ 389. ~~(5-1-94)~~(\_\_\_\_)

**02. Minimum Amount.** The minimum amount for any lump sum agreement shall be three hundred thousand dollars (\$300,000). (5-1-94)

**03. Payment Waiver.** Upon the execution and full performance of the agreement by the person, the Department shall waive the payment requirements of Section ~~527~~ 389. All other provisions of Section ~~527~~ 389 shall remain applicable to the person. ~~(5-1-94)~~(\_\_\_\_)

**400. PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMITS.**

The purpose of Sections 400 through ~~406~~10 is to establish uniform procedures for the issuance of "Tier II Operating Permits". ~~(5-1-94)~~(\_\_\_\_)

**401. TIER II OPERATING PERMIT.**

**01. Optional Tier II Operating Permits.** The owner or operator of any stationary source or facility which is not subject to (or wishes to accept limitations on the facility's potential to emit so as to not be subject to) Sections 300 through ~~386~~99 may apply to the Department for an operating permit to: ~~(4-5-00)~~(\_\_\_\_)

a. Authorize the use of alternative emission limits (bubbles) pursuant to Section 440; (5-1-94)

b. Authorize the use of an emission offset pursuant to Sections 204 or 206; (5-1-94)

c. Authorize the use of a potential to emit limitation, an emission reduction or netting transaction to

exempt a facility or modification from certain requirements for a permit to construct; (4-5-00)

d. Authorize the use of a potential to emit limitation to exempt the facility from Tier I permitting requirements. (4-5-00)

e. Bank an emission reduction credit pursuant to Section 461; (5-1-94)

**02. Required Tier II Operating Permits.** A Tier II operating permit is required for any stationary source or facility which is not subject to Sections 300 through 38699 with a permit to construct which establishes any emission standard different from those in these rules. (~~3-19-99~~)(\_\_\_\_)

**03. Tier II Operating Permits Required By The Department.** The Director may require or revise a Tier II operating permit for any stationary source or facility whenever the Department determines that: (5-1-94)

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or (4-5-00)

b. Specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (5-1-94)

**04. Multiple Tier II Operating Permits.** Subject to approval by EPA, the Director may issue one (1) or more Tier II operating permits to a facility which allow any specific stationary source or emissions unit within that facility a future compliance date of up to three (3) years beyond the compliance date of any provision of these rules, provided the Director has reasonable cause to believe such a future compliance date is warranted. (4-5-00)

**402. APPLICATION PROCEDURES.**

Application for a Tier II operating permit must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 400 through 40610. (~~5-1-94~~)(\_\_\_\_)

**01. Required Information.** Site information, plans, description, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. (5-1-94)

**02. Additional Specific Information.** (5-1-94)

a. For emission reduction credits, a description of the emission reduction credits proposed for use, including descriptions of the stationary sources or facilities providing the reductions, a description of the system of continuous emission control which provides the emission reduction credits, emission estimates, and other information necessary to determine that the emission reductions satisfy the requirements for emission reduction credits (Section 460); and (4-5-00)

b. For alternative emission limits (bubbles) or emission offsets, information on the air quality impacts of the traded emissions as necessary to determine the change in ambient air quality that would occur. (5-1-94)

c. For restrictions on potential to emit, a description of the proposed potential to emit limitations including the proposed monitoring and recordkeeping requirements that will be used to verify compliance with the limitations. (4-5-00)

**03. Estimates Of Ambient Concentrations.** All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51 Appendix W (Guideline on Air Quality Models). (4-5-00)

a. Where an air quality model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 404.01.c. (4-5-00)

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (revised)" (1984) should be used to determine the comparability of air quality models. (5-1-94)

**04. Additional Information.** Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 400 through 40610 shall be furnished upon request. (~~5-1-94~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**404. PROCEDURE FOR ISSUING PERMITS.**

**01. General Procedures.** General procedures for Tier II operating permits. (5-1-94)

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

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

i. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 404.01.c. The Department shall set forth reasons for any denial; or (5-1-94)

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

c. An opportunity for public comment shall be provided on an application for any Tier II operating permit pursuant to Subsection 401.01, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516 and any other application which the Director determines an opportunity for public comment should be provided. (5-1-94)

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)

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

determination. (5-1-94)

- d. A copy of each proposed and final permit will be sent to the U.S. Environmental Protection Agency. (4-5-00)

**02. Specific Procedures.** Procedures for Tier II operating permits required by the Department under Subsection 401.03. (5-1-94)

a. The Director shall send a notification to the proposed permittee by registered mail of his intention to issue a Tier II operating permit for the facility concerned. The notification shall contain a copy of the proposed permit in draft form stating the proposed emission standards and any required action, with corresponding dates, which must be taken by the proposed permittee in order to achieve or maintain compliance with the proposed Tier II operating permit. (5-1-94)

b. The Department's proposed Tier II operating permit shall be made available to the public in at least one (1) location in the region in which the facility is located. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the facility is located. A copy of such notice shall be sent to the applicant. There shall be a thirty (30) day period after publication for comment on the Department's proposed Tier II operating permit. Such comment shall be made in writing to the Department. (5-1-94)

c. A public hearing will be scheduled to consider the standards and limitations contained in the proposed Tier II operating permit if the proposed permittee files a request therefor with the Department within ten (10) days of receipt of the notification, or if the Director determines that there is good cause to hold a hearing. (5-1-94)

d. After consideration of comments and any additional information submitted during the comment period or at any public hearing, the Director shall render a final decision upon the proposed Tier II operating permit within thirty (30) days of the close of the comment period or hearing. At this time the Director may adopt the entire Tier II operating permit as originally proposed or any part or modification thereof. (5-1-94)

e. All comments and additional information received during the comment period, together with the Department's final permit, shall be made available to the public at the same location as the proposed Tier II operating permit. (5-1-94)

**03. Availability Of Fluid Models And Field Studies.** The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

**04. Permit Revision Or Renewal.** The Director may approve a revision of any Tier II operating permit or renewal of any Tier II operating permit provided the stationary source or facility continues to meet all applicable requirements of Sections 400 through ~~406~~10. Revised permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsection 404.01.c. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. Renewed Tier II operating permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsections 404.01.c., and 404.02.b. through 404.02.e. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. The expiration of a permit will not affect the operation of a stationary source or a facility during the administrative procedure period associated with the permit renewal process. (~~5-1-94~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**407. TIER II OPERATING PERMIT PROCESSING FEE.**

**01. Tier II Operating Permit Processing Fee.** A Tier II operating permit processing fee, calculated by

the Department pursuant to the categories provided in the following table, shall be paid to the Department by the person receiving a Tier II permit or permit renewal.

<b>TIER II OPERATING PERMIT CATEGORY</b>	<b>FEE</b>
General permit, no facility specific requirements	\$500
Stationary sources or facilities with permitted emissions of less than one (1) ton per year	\$1,250
Stationary sources or facilities with permitted emissions of one (1) to less than ten (10) tons per year	\$2,500
Stationary sources or facilities with permitted emissions of ten (10) to less than one hundred (100) tons per year	\$5,000
Stationary sources or facilities with permitted emissions of one hundred (100) tons or more per year	\$10,000
Synthetic minor stationary sources with permitted emissions below a major threshold level	\$10,000

( )

**02. Tier II Operating Permit Processing Fee Not Required.** So long as no other review or analysis is required, the Tier II operating permit processing fee is not required to be submitted when: ( )

a. Permit to construct is rolled into a Tier II permit; ( )

b. A change to correct typographical errors is requested; ( )

c. A change in the name of the holder of a Tier II operating permit is requested; or ( )

d. A synthetic minor permit is issued and the Department's processing costs can be charged against fees collected from the person receiving the permit under Title V of the federal Clean Air Act amendments of 1990. The fee calculation shall not include fugitive emissions. ( )

**408. PAYMENT OF TIER II OPERATING PERMIT PROCESSING FEE.**

**01. Fee Submittal.** The Tier II operating permit processing fee shall be payable upon receipt of an assessment sent, along with the final permit or permit renewal, to the person receiving a permit or permit renewal by the Department. The Tier II operating permit fee should be sent to:

Air Quality Tier II Fees  
Fiscal Office  
Idaho Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706-1255

( )

**02. Delinquency.** Failure to submit a Tier II operating permit processing fee within forty-five (45) days of receipt of an assessment by the Department will result in a monthly accrual of interest in the amount of twelve percent (12%) per annum on the outstanding balance until the fee is paid in full. ( )

**409. RECEIPT AND USAGE OF FEES.**

Tier II operating permit processing fee and delinquency interest receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used toward technical, legal and administrative support of the Department's air quality stationary source permit program except for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. The Department will review the Tier II fee schedule at least every two (2) years. ( )

**410. APPEALS.**

A person may be able to file an appeal within thirty (30) days of the date the person receives an assessment under Section 407, in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". ( )

~~407~~11. -- 439. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~470. PERMIT APPLICATION FEES FOR TIER II PERMITS.~~

~~Any person applying for a Tier II permit shall pay a permit application fee of five hundred dollars (\$500) for each permit requested or amended. (3-7-95)L~~

~~47~~40. -- 499. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~517. -- 524. (RESERVED).~~

SECTIONS 525 THROUGH 528 HAVE BEEN RENUMBERED TO SECTIONS 387 THROUGH 391

~~529. (RESERVED).~~

SECTIONS 530 THROUGH 538 HAVE BEEN RENUMBERED TO SECTIONS 392 THROUGH 399

~~539~~17. -- 549. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

**800. REGISTRATION FEE FOR PERMIT BY RULE.**

A registration fee of two hundred fifty dollars (\$250) shall be submitted to the Department with each permit by rule registration. ( )

**801. PAYMENT OF FEES FOR PERMITS BY RULE REGISTRATION.**

The permit by rule registration fee shall be paid in its entirety at the time the required registration form is submitted to the Department. The permit by rule registration form and fee should be sent to:

Permit by Rule Registration Fees  
Fiscal Office  
Idaho Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706-1255 ( )

**802. RECEIPT AND USAGE OF FEES.**

Permit by rule registration fee receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used toward technical, legal and administrative support of the Department's air quality stationary source permit program except for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. Fees payable under Section 800/ shall be retained by the Department regardless of whether a permit by rule registration is accepted by the Department in response to a registration request. ( )

~~80~~3. -- 804. (RESERVED).

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE**

**DOCKET NO. 58-0105-0101**

**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 19, 2001. If no such written request is received, a public hearing will not be held.

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:** Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rulemaking updates Idaho's rules so that they are consistent with revisions to the federal RCRA regulations as of July 1, 2001. Other specific changes include revisions to Subsection 003.05, definition of Environmental Appeals Board; technical corrections to definitions in Subsections 003.06 and 003.11; technical corrections in Section 004; elimination of court vacated language and technical corrections in Section 005; a new Subsection at 005.01.g. to note a facility merger and name change; technical corrections for Sections 006, 007, 008, 009, and 011; technical corrections in Section 012 to denote the meaning of "EPA" and "Administrator" or "Regional Administrator"; technical corrections to Section 014 to specify the current 40 CFR citation; and technical corrections to Section 016.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2001 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or [jbrueck@deq.state.id.us](mailto:jbrueck@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 26, 2001.

DATED this 18th day of July, 2001.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

THE FOLLOWING IS THE TEXT OF DOCKT NO. 58-0105-0101

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260-266, 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2000~~01~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. (~~3-30-01~~)(\_\_\_\_)

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

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

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

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

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

**003. DEFINITIONS.**

For the purpose of these rules and any materials incorporated herein by reference, the following definitions apply unless their application would be inconsistent with the Hazardous Waste Management Act, or unless these rules expressly provide for different definitions. (3-1-93)

**01. Board.** The Idaho Board of Environmental Quality. (6-10-88)

**02. CFR.** The United States Code of Federal Regulations. (3-1-93)

**03. Department.** The Idaho Department of Environmental Quality. (6-10-88)

**04. Director.** The Director of the Idaho Department of Environmental Quality, or his designee. (12-31-91)

**05. Environmental Appeals Board.** When used in the context of 40 CFR, the definition shall be the ~~Director of the Idaho Department~~ Idaho Board of Environmental Quality except as set forth in Section 39-4413(2), Idaho Code, or except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Appeals Board. (~~7-1-97~~)(\_\_\_\_)

**06. U.S. Environmental Protection Agency or EPA, EPA Headquarters, or EPA.** When used in the context of 40 CFR, the definition shall be the Idaho Department of Environmental Quality, except when used to refer to an EPA Identification number, EPA hazardous waste number, EPA forms, publications or guidance, and EPA Acknowledgment of Consent, and where noted in these rules. Under the latter circumstances, the definition shall be the U.S. Environmental Protection Agency and the Headquarters of the U.S. Environmental Protection Agency as appropriate. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency. (~~7-1-97~~)(\_\_\_\_)

- 07. HWFSA.** The Hazardous Waste Facility Siting Act of 1985, Sections 39-5801 et seq., Idaho Code. (3-1-93)
- 08. HWMA.** The Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code. (3-1-93)
- 09. IDAPA.** The Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code. (3-1-93)
- 10. RCRA.** When used in the context of 40 CFR, the definition shall be the comparable sections of the Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code. When used in the context of these rules, the definition shall be The Resource Conservation and Recovery Act, 42 U.S. Code, Sections 6901 et seq. (7-1-97)
- 11. Regional Administrator Or Administrator.** When used in the context of 40 CFR, the definition shall be the Director of the Idaho Department of Environmental Quality, or his designee, except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency Administrator or Region 10 Regional Administrator as appropriate. (~~7-1-97~~)(\_\_\_\_)
- 12. TSD.** Treatment, storage or disposal. (6-10-88)
- 13. United States Or U.S.** When used in the context of 40 CFR, the definition shall be the state of Idaho, except where noted in these rules. When used in the context of these rules, the definition shall be the United States. (7-1-97)

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (~~3-30-01~~)(\_\_\_\_)

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts, except the parenthetical, "(except as provided under 40 CFR 261.4(a)(17))." in the second sentence of 40 CFR 261.2(c)(3), and except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-30-01~~)(\_\_\_\_)

**01. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by EnviroSAFE Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

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

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

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

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

- (1) The waste profile information; and (3-16-96)
- (2) The name and address of the generator. (3-16-96)
- iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)
- iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)
- v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)
- (1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)
- (2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)
- vi. For purposes of Subsections 005.01.b. and 005.01.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)
- c. Subsequent Verification Testing. (3-16-96)
- i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)
- ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)
- iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)
- iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)
- v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)
- (1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)
- (2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)
- vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

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

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06
arsenic	0.50
barium	7.60
beryllium	0.010
cadmium	0.050
chromium	0.33
lead	0.15
mercury	0.009
nickel	1
selenium	0.16
silver	0.30
thallium	0.020
vanadium	2
zinc	70

(3-16-96)

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

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

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification.

(3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)

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

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)

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

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. ( )

**006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation By Reference.** 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "~~Regional~~-Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.51, 262.53, ~~and~~ 262.54(g)(1), and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States. (3-30-01)( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), ~~and~~ 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (4-5-00)( )

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States. (3-30-01)( )

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

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, ~~and~~ 264.301(1), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency. (3-30-01)( )

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

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR ~~265.1(c)(4)~~, 265.149, ~~and~~ 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-30-01~~)(      )

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

40 CFR Part 266 and all Subparts (excluding Subparts A and B) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~. (~~3-30-01~~)(      )

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, ~~268.13~~, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), "Administrator" shall be defined as U.S. Environmental Protection Agency Administrator. (~~3-30-01~~)(      )

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), ~~270.10(f)(2)~~, 270.10(f)(3), ~~270.10(g)~~, 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (~~3-30-01~~)(      )

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

40 CFR Part 124, Subparts A and B are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~, 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. (~~3-30-01~~)(      )

**014. INTERIM STATUS SURFACE IMPOUNDMENTS.**

In accordance with Section 3005(j) of RCRA which is herein incorporated by reference, surface impoundments in existence on November 8, 1984, and qualifying for interim status shall not receive, store or treat hazardous waste after November 8, 1988, unless retrofitted to meet standards applicable to new impoundments or subject to an exemption. Copies of the federal statute herein incorporated by reference are available in the locations provided in Subsection 002.02. Standards applicable to new surface impoundments which are referenced in Section 3005(j) of RCRA as requirements of Section 3004(o) (42 U.S.C. 6924(o)) appear in federal regulations as 40 CFR Parts ~~264.22+0-23+2~~ and ~~265.22+0-2301~~ and are incorporated as provided in Sections 008 and 009. (~~3-1-93~~)(      )

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation By Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000~~1~~. (~~3-30-01~~)(      )

**02. Used Oil As A Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant.

Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

- a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)
- b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2000. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-30-01~~)( )

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.06 - SOLID WASTE MANAGEMENT RULES**  
**DOCKET NO. 58-0106-0101**  
**NOTICE OF HEARING AND EXTENSION OF COMMENT PERIOD**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105, 39-107 and 39-7408C, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**September 11, 2001, 6:30 p.m.**  
**Department of Environmental Quality**  
**Large Conference Room**  
**900 N. Skyline, Suite B**  
**Idaho Falls, 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. For arrangements, contact the undersigned at (208)373-0418.

**DESCRIPTIVE SUMMARY:** The proposed rule was published in the Idaho Administrative Bulletin, Volume 01-7, July 4, 2001, pages 167 through 193. On July 31, 2001, a public hearing was broadcast statewide through interactive video teleconferencing. Because of technical difficulties, the Idaho Falls and Pocatello sites were unable to participate in the public hearing. In order to give those sites an opportunity to attend a public hearing, DEQ has scheduled another hearing and extended the comment period through September 14, 2001.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502 or [dehlert@deq.state.id.us](mailto:dehlert@deq.state.id.us).

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 14, 2001.

DATED this 8th day of August, 2001.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.16 - RULES FOR NUTRIENT MANAGEMENT**

**DOCKET NO. 58-0116-0101 (REPEAL)**

**NOTICE OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 19, 2001. If no such written request is received, a public hearing will not be held.

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 2000 legislative session, the Legislature enacted Senate Bill 1426, creating the Department of Environmental Quality (DEQ). In addition to several technical corrections, Senate Bill 1426 deleted Section 39-105(3)(o), Idaho Code, which contained authority for the adoption of a state nutrient management plan and promulgation of rules to implement the plan. The purpose of this rulemaking is to repeal IDAPA 58.01.16, "Rules for Nutrient Management" because the statutory authority no longer exists.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October or November 2001 for adoption of a pending rule. The repeal is expected to be final and effective upon the conclusion of the 2002 session of the Idaho Legislature.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 26, 2001.

DATED this 18th day of July, 2001.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/ Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

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**THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.**

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

**59.01.08 - PERSI GAIN SHARING RULES**

**DOCKET NO. 59-0108-0101**

**NOTICE OF RULEMAKING - PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is December 1, 2000. This pending rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 59-1314(1) and 72-1405 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary 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.

In HB 510, the 2000 Legislature authorized the Retirement Board to allocate extraordinary earnings in the PERSI defined benefit plan subject to certain restrictions and limitations. The allocation of extraordinary earnings is also described as gain sharing. Under the statutory structure, if extraordinary gains exist, the board has discretion to determine whether any or all of the gains will be allocated. If allocated, they are allocated to three groups identified in the statute – active members, retirees, and employers. These rules set forth definitions, how extraordinary gains will be determined, how the allocations will be made between each group, and within each group. It includes both minimum and maximum limits for allocations.

The temporary and proposed rules have been amended in response to public comment and pursuant to Section 67-5227, Idaho Code. The changes to the temporary rules are identical to the changes to the proposed rules. Rule 308, which addresses gain sharing in the active member pool when there has been an intervening death of the member, has been amended to incorporate the limits of Rules 404, rather than Rule 305. Rule 309, which explains how the gain sharing allocation is accounted for and maintained, has been amended to clarify that gain sharing is one source of funds in a member's Choice Account and that it is treated like other source funds in the Choice Plan except for purposes of loans and hardship withdrawals.

Only the sections that have been changed are printed in this bulletin. The original text of the temporary and proposed rule was published in the January 3, 2001 Idaho Administrative Bulletin, Volume 01-1, pages 322 through 328.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Alan Winkle, Executive Director, 334-2451.

DATED this 20th day of June, 2001.

Alan H. Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th St., Boise, ID 83702  
P.O. Box 83720  
Boise, ID 83720-0078  
Phone: (208) 334-2451  
FAX: (208) 334-3804

**IDAPA 59  
TITLE 01  
Chapter 08**

**PERSI GAIN SHARING RULES**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 01-1, January 3, 2001, pages 322 through 328.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2002 Idaho State Legislature as a final rule.**

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**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 59-0108-0101**

**308. INTERVENING DEATH OF ACTIVE MEMBER (Rule 308).**

When a member would have been included in the active member allocation but dies prior to the transfer of allocations, no allocation shall be made to the member, beneficiary or estate except that an optional death benefit recipient will receive the active member's allocation as limited by Rule ~~305~~ 404. ~~(12-1-00)F~~(12-1-00)T

**309. TREATMENT OF GAIN SHARING ALLOCATIONS IN THE CHOICE ACCOUNT (Rule 309).**

Gain sharing allocations transferred to individual Choice Accounts have no effect on an individual's Base Plan benefit. Gain sharing allocations, and the earnings thereon, will be accounted for separately from other Choice Plan contributions but will be treated as one plan for purposes of reporting, investing, distributions, and fees to the extent they are applicable. Related provisions of the Plan adopted by the Board to facilitate voluntary and employer contributions are ~~incorporated herein~~ applicable to gain sharing allocations to the extent not inconsistent with these rules and Sections 59-1308 and 59-1309, Idaho Code. However, no loans or hardship withdrawals may be taken against gain sharing account balances. ~~(12-1-00)F~~(12-1-00)T

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# Bulletin Summary of Proposed Rulemakings

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## PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

### **IDAPA 02 - DEPARTMENT OF AGRICULTURE P.O. Box 790, Boise, Idaho 83701-0790**

Docket No. **02-0214-0101**, Rules for Weights and Measures. Eliminates the retroactive requirement for ticket printers for vehicle mounted metering systems; deletes obsolete language referencing National Bureau of Standards; adds date specific editions of National Institute of Standards and Technology Handbooks, HB 44 and HB 133 as adopted by reference; deletes obsolete references; adds a website address for reference documents. Comment By: 9/28/01.

### **IDAPA 09 - DEPARTMENT OF LABOR 317 W. Main Street, Boise, ID 83735**

Docket No. **09-0130-0101**, Rules of the Benefits Bureau. For benefit eligibility purposes, clarifies that a suspension for an "indefinite period of time" will be defined as a discharge. Comment By: 9/27/01.

Docket No. **09-0130-0102**, Rules of the Benefits Bureau. Clarifies that a claimant suspended with or without pay for a specific number of days is not considered unemployed when given a date to return to work. Comment By: 9/27/01.

Docket No. **09-0130-0103**, Rules of the Benefits Bureau. Adds categories of information that a claimant must provide to the Department as a condition of eligibility for benefits, including a record of a claimant's work search, if requested, once a claim has been established. Comment By: 9/27/01.

Docket No. **09-0130-0104**, Rules of the Benefits Bureau. Changes conform to statutory changes by deleting penalty for employers who fail to provide separation information within 10 days of the Department's request. Comment By: 9/27/01.

Docket No. **09-0130-0105**, Rules of the Benefits Bureau. Adds additional types of work-seeking activities that a claimant may be expected to do to comply with requirements for eligibility for benefits. Comment By: 9/27/01.

Docket No. **09-0135-0101**, Rules of the Employer Accounts Bureau. Adds definition of domestic labor consistent with that used by the Internal Revenue Service and defines what remuneration constitutes non-cash payments for farm work. Comment By: 9/27/01.

Docket No. **09-0135-0102**, Rules of the Employer Accounts Bureau. Clarifies that an employer is given appeal rights in all cases involving requests for transfer of experience rates; clarifies that when an employer sells a business to another employer, the buyer may use the taxable wage base of the seller for calculating a taxable wage base only if the experience rate of the seller has been transferred to the buyer. Comment By: 9/27/01.

Docket No. **09-0135-0103**, Rules of the Employer Accounts Bureau. Clarifies which quarter that back wages will be assigned for calculating unemployment benefits and which calendar quarters to assign back wages to determine when employment security contributions on those wages are due and payable. Comment By: 9/27/01.

Docket No. **09-0140-0101**, Rules of the Job Training Partnership Act. Repeal of chapter. Comment By: 9/27/01.

### **IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS 600 S. Orchard, Suite A, Boise, Idaho 83705-1242**

Docket No. **10-0101-0101**, Rules of Procedure. Candidates who fail to pass an examination will not be allowed to review exam questions if those questions will be repeated on later exams; more closely aligns the academic requirements for equivalency with an accredited engineering program for those not holding an engineering degree; eliminates references to "corporation" where "business entity" is more appropriate. Comment By: 9/26/01.

Docket No. **10-0102-0101**, Rules of Professional Responsibility. Substitutes "business entity" for "corporation" as used in statute. Comment By: 9/26/01.

#### **IDAPA 14 - BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS**

**P. O. Box 83720, Boise, ID 83720-0033**

Docket No. **14-0101-0101**, Rules of Procedure of the Board of Professional Geologists. Sets fees for examination, certification, reexamination, and replacement of cost certificates, as required by the Association of State Boards of Geology, as part of the registration requirement; addresses examination-related administrative issues; creates a reduced renewal rate for licensees 70 or older. Comment By: 9/27/01.

#### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**PO Box 83720, Boise, ID 83720-0036**

Docket No. **16-0304-0102**, Rules Governing the Food Stamp Program in Idaho. Revises requirements for application processing, alien income and eligibility, income determinations, resource determinations, claims management, and work criteria for single adults and families receiving Food Stamps. Comment By: 9/26/01.

Docket No. **16-0309-0106**, Rules Governing the Medical Assistance Program. Updates dental procedure codes in the Idaho Medicaid Provider Handbook to reflect the 2001 American Dental Association codes and re-incorporates Handbook into the rules to comply with SB 1301; clarifies billing for pulp vitality tests, behavior management, and consultations; and adds limitations on panoramic x-rays. Comment By: 9/26/01.

#### **IDAPA 35 - IDAHO STATE TAX COMMISSION**

**800 Park, Plaza IV, P.O. Box 36, Boise, ID 83722**

Docket No. **35-0102-0101**, Sales and Use Tax Administrative Rules. Corrects references made to deleted rules and updates them to the correct section; deletes obsolete language referring to ISTC rules and makes them consistent with the terminology now used to reference rules; revises Form ST-108BT. Comment By: 9/26/01.

Docket No. **35-0105-0101**, Motor Fuels Tax Administrative Rules. Clarifies the terminology of undyed diesel fuel to be consistent industry usage; clarifies how claims for refunds should be made; conforms to statutory changes for temporary permits with extended time limits by deleting the hourly time limit and calling it a temporary permit; deletes weight requirement for vehicles and clarifies documentation needed to claim refunds; updates language to IFTA licensees; and deletes obsolete language and updates terminology. Comment By: 9/26/01.

Docket No. **35-0109-0101**, Idaho County Option Kitchen and Table Wine Tax Administrative Rules. Changes references to the Director of Law Enforcement to the Director of the Idaho State Police. Comment By: 9/26/01.

Docket No. **35-0112-0101**, Idaho Beer Tax Administrative Rules. Changes references to the Director of Law Enforcement to the Director of the Idaho State Police. Comment By: 9/26/01.

#### **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**1410 N. Hilton, Boise, Idaho 83706-1255**

Docket No. **58-0101-0104**, Rules for the Control of Air Pollution in Idaho. Changes propose to adopt a permit to construct application fee, processing fee schedules for calculating permit to construct and Tier II operating permit processing fees, and a registration fee for owners of qualified facilities opting to register with DEQ in lieu of obtaining an individual permit, and makes corrections to references within the rule chapter. Comment By: 10/9/01.

Docket No. **58-0105-0101**, Rules and Standards for Hazardous Waste. Updates incorporated rules to be consistent with revisions to the federal RCRA regulations as of July 1, 2001; revised definition of Environmental Appeals

Board; makes technical corrections; eliminates court vacated language; denotes meaning of “EPA” and “Administrator” or “Regional Administrator”. Comment By: 9/26/01.

Docket No. **58-0116-0101**, Rules for Nutrient Management. Repeal of chapter. Comment By: 9/26/01.

**PUBLIC HEARINGS** – Public Hearings Have Been Scheduled For The Following Dockets:

Department of Health and Welfare

Docket No. **16-0309-0103**, (Temporary Rulemaking) Rules Governing the Medical Assistance Program.

Department of Environmental Quality

Docket No. **58-0101-0104**, Rules for the Control of Air Pollution in Idaho. Comment By: 10/9/01.

Docket No. **58-0106-0101**, Solid Waste Management Rules. Comment By: 9/14/01.

Please refer to the Idaho Administrative Bulletin, **September 5, 2001, Volume 01-9** for notices and text of all rulemakings, public hearing schedules, Governor’s executive orders, and agency contact names.

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The Idaho Administrative Bulletin and Administrative Code are available on-line at: <http://www2.state.id.us/adm/adminrules/>

**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**This index tracks the history of all agency rulemakings from 1993 to the present.  
It includes all rulemaking activities on each chapter of rules  
and includes negotiated, temporary, proposed, pending  
and final rules, public hearing notices  
and vacated rulemaking notices.**

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