

COMMERCE & HUMAN RESOURCES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2012 Legislative Session

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IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8, pages 29 through 31.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Josh McKenna at 332-3570 ext. 3919.

DATED this 30th of August, 2011.

Josh McKenna, (Acting) Bureau Chief
Idaho Department of Labor
317 W. Main Street, Boise, Idaho 83735
Phone 332-3570 ext. 3919 / Fax 334-6125

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.30.375 is being amended to limit when a corporate officer can be personally eligible for unemployment insurance benefits. IDAPA 09.01.30.550 allows claimants to file continued claim reports by facsimile or electronic mail. This will help eliminate the late payment of benefits to claimants filing from out of state.

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

Compliance with deadlines in amendments to governing law or federal programs and conferring a benefit.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no fiscal impact to the General Fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because IDAPA 09.01.30 is being changed to accurately reflect statutory language and conform with Section 72-1312A, Idaho Code passed during the 2011 Legislative Session.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN

COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Josh McKenna at 332-3570 ext. 3919.

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 August 24, 2011.

DATED this 6th of July, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-1101

375. FULLY EMPLOYED/NOT UNEMPLOYED.

Ref. Sec. ~~tion~~ 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. A claimant who has been suspended with or without pay for a specific number of days, who has been given a date to resume employment after the suspension, is not considered unemployed and is not eligible for benefits. (3-15-02)

04. Corporate Officer. A corporate officer whose claim for benefits is based on wages with a corporation in which the corporate officer or a family member of the corporate officer has an ownership interest is considered unemployed and eligible for benefits only when his unemployment is due to circumstances beyond his control or the control of a family member of the corporate officer with an ownership interest in the corporation. A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation. ()

a. Not unemployed. Corporate officers are not unemployed and are ineligible for benefits in any week during the corporate officer's term of office with the corporation even if wages are not being paid. ()

b. Circumstances beyond a corporate officer's control or the control of a family member with an ownership interest in the corporation. Circumstances beyond a corporate officer's or a family member's control are circumstances that last through the corporate officer's benefit year end date and include, but are not limited to, the following: ()

i. Unemployment due to the corporate officer's removal from the corporation under circumstances that satisfy the personal eligibility conditions set forth in Section 72-1366, Idaho Code; ()

ii. Unemployment due to dissolution of the corporation; or ()

iii. Unemployment due to the sale of the corporation to an unrelated third party.()

c. Rebuttable presumption - Overpayment. If at any time during the benefit year the corporate officer resumes or returns to work for the corporation, it shall be a rebuttable presumption that the corporate officer's unemployment was due to circumstances within the corporate officer's control or the control of a family member with an ownership interest in the corporation, and all benefits paid to the corporate officer during the benefit year shall be considered an overpayment for which the corporate officer shall be liable for repayment. ()

d. Family member. "Family member" is defined as a person related by blood or marriage as a parent, stepparent, grandparent, spouse, brother, sister, child, stepchild, adopted child or grandchild. ()

(BREAK IN CONTINUITY OF SECTIONS)

550. REPORTING REQUIREMENTS.

Each claimant shall report weekly or biweekly for benefits as directed. When filing claim reports, a claimant shall use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule shall result in ineligibility for benefits for the week(s) claimed. Ref. Sec-tion 72-1366(1), Idaho Code. (4-2-08)()

01. In-Person Reports. A claimant reporting in person must hand the report to an authorized employee of the local office or place it in a receptacle identified for that purpose. The Department will not accept reports deposited under or through the doors of the office. Reports filed in person at a local office shall be considered timely when filed within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the following next working day. (3-19-99)()

02. Mailed Reports. Reports that are mailed shall be considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period shall be extended to include the following next working day. (3-19-99)()

03. Telephone/Internet Reports. Reports filed by telephone to the Idaho Tel A Claim system or via the internet must be shall be considered timely when made between 12:01 a.m. Mountain Time of the Sunday following the week being claimed and midnight Mountain Time of the Saturday following the week being claimed. (3-20-04)()

04. Facsimile Reports. Reports filed by facsimile shall be considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department.

()

05. Electronic Mail Reports. Reports filed by electronic mail shall be considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department.

()

046. When Report Missing. If a claimant establishes, by credible and corroborated evidence, that a missing report was ~~personally delivered to a local office or mailed within the filing period~~ properly filed as required by this rule, a replacement report shall be considered timely.

(3-19-99)()

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8, pages 32 through 34.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael Johnson at 332-3570 ext. 3082.

DATED this 30th of August, 2011.

Michael Johnson, (Acting) Bureau Chief
Idaho Department of Labor
317 West Main Street, Boise, Idaho 83735
Phone 332-3570 ext. 3082 / Fax 334-6125

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, 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 August 17, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.35 is being amended to allow a corporation to exempt its corporate officers from unemployment insurance coverage and to reinstate corporate officers previously exempted. Corporations will not have to pay employment security contributions for exempt corporate officers and exempt corporate officers would not be eligible for unemployment insurance benefits.

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

Compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no fiscal impact to the General Fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because IDAPA 09.01.35.108 is being changed to accurately reflect statutory language and conform with Section 72-1312A, Idaho Code passed during the 2011 Legislative Session.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN

COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael Johnson at 332-3570 ext. 3082.

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 August 24, 2011.

DATED this 6th of July, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0135-1101

108. ELECTION TO EXEMPT CORPORATE OFFICERS.

A corporation may elect to exempt one (1) or more corporate officers from coverage by registering with the Department each qualifying corporate officer it elects to exempt. Registrations in the format prescribed by the Department made on or before December 15th shall become effective on the first day of the next calendar year and remain effective for at least two (2) consecutive calendar years. Exemptions are not retroactive and no refund or credit shall be given for contributions paid before the effective date of the exemption. Exemptions continue to remain in effect after two (2) consecutive calendar years unless the exemption is terminated according to Subsection 108.04 of this rule or coverage is reinstated according to Subsection 108.05 of this rule. ()

01. Public Company Election. A public company, as defined in Section 72-1352A, Idaho Code, may elect to exempt any bona-fide corporate officer who: ()

a. Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; ()

b. Is a shareholder of the corporation; ()

c. Exercises control in the daily management of the corporation; and ()

d. Does not perform manual labor as a primary work responsibility. ()

02. Election for Corporations that are not Public Companies. A corporation that is not a public company as defined in Section 72-1352A, Idaho Code, may exempt from coverage any bona-fide corporate officer who: ()

a. Is a shareholder of the corporation; ()

b. Voluntarily agrees to be exempted from coverage; and ()

c. Exercises substantial control in the daily management of the corporation. ()

03. Election to Exempt Not Applicable. The election to exempt does not apply to corporate officers covered by Sections 72-1316A, 72-1322D and 72-1349C, Idaho Code. ()

04. Termination of Exemption. A corporate officer's exemption terminates upon the corporate officer's failure to satisfy the election criteria in Subsections 108.01 or 108.02 of this rule. It is the responsibility of the corporation to notify the Department in writing in a format required by the Department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated. ()

05. Reinstatement of Coverage. A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted. Reinstatement requires written notice from the corporation to the Department in a format required by the Department. Reinstatement requests received by the Department on or before December 15th shall become effective the first day of the calendar year following the end of the exemption's initial two (2) year effective date. Coverage shall not be reinstated retroactively. ()

06. Definitions. For purposes of this rule: ()

a. "Bona-fide corporate officer" is defined as any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer. ()

b. "Exercise substantial control in the daily management of the corporation" is defined as when an individual makes managerial decisions over a business function or functions that have some effect on the entire corporation. This includes the authority to hire and fire, to direct other's activities in the corporation, or the responsibility to account for and pay over taxes or debts incurred by the corporation. ()

07. Services in Employment. Unless specifically exempted, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance. ()

08. FUTA Applicable. The wages attributable to exempt corporate officers are wages subject to the Federal Unemployment Tax Act (FUTA) and the corporation may be liable for FUTA taxes. ()

1089. -- 110. (RESERVED)

**IDAPA 15 - OFFICE OF THE GOVERNOR
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

15.02.02 - VOCATIONAL REHABILITATION SERVICES

DOCKET NO. 15-0202-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 67-5407(e), 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 complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 329 through 334.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bruce Christopherson, Rehab Services Chief, at (208) 639-8364.

DATED this 27th day of October 2011.

Angela Jones, Administrator
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720
Boise, ID 83720-0012
Phone: (208) 639-8373
Fax: (208) 334-2963

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5407(e), 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 October 19, 2011.

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:

A change in the ICBVI's Vocational Rehabilitation policy is required as a result of ICBVI's federal review conducted by the federal Rehabilitation Services Administration in 2010. The policy changes will put ICBVI in compliance with 34 CFR 361.41(a), 34 CFR 361.41(b)(2), and 34 CFR 361.54(b)(3)(ii). ICBVI is adding a policy outlining Information and Referral; changing the Application for VR services to indicate all ways that a client is considered to have applied, and removing the policy citing financial participation for clients that received SSA benefits, as this is not allowed under federal regulations.

Changes to the VR Payment Policy related to maintenance will bring ICBVI into alignment with the provision of services necessary to reasonably allow VR clients to participate in the VR program.

ICBVI is adding a policy that defines what the information and referral process is for ICBVI's VR program. ICBVI is changing the wording related to its policy for VR services to accurately reflect all ways that a client can demonstrate that they have applied and are in compliance with the federal CFRs noted above. The removal of the section citing SSA beneficiaries are required to participate financially makes the policy compliant with federal CFRs governing the VR program.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated

rulemaking was not conducted because of the simple nature of the proposed rule changes, and the fact that changes are necessary to comply with requirements disclosed in a federal review of the program.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nanna Hanchett, Rehab Services Chief, at (208) 639-8364.

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 October 26, 2011.

DATED this 23rd day of August 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0202-1101

011. ABBREVIATIONS.

- | | | |
|-------------|---|----------|
| 01. | ATC. Assessment and Training Center. | (4-2-08) |
| 02. | CFR. Code of Federal Regulations. | (4-2-08) |
| 03. | <u>ICBVI.</u> <u>The Idaho Commission for the Blind and Visually Impaired.</u> | () |
| 034. | IPE. Individual Plan for Employment. | (4-2-08) |
| 045. | SSDI. Social Security Disability Insurance. | (4-2-08) |
| 056. | SSI. Supplemental Security Income. | (4-2-08) |
| 07. | <u>VR.</u> <u>Vocational Rehabilitation.</u> | () |

(BREAK IN CONTINUITY OF SECTIONS)

101. INFORMATION, REFERRAL, AND APPLICATION FOR VR SERVICES.

Any blind or visually impaired or functionally blind individual may apply for vocational rehabilitation services. To apply for vocational rehabilitation services, such an individual must:

Any agency, organization, individual (including self) or the One-Stop delivery system may refer an individual to ICBVI for services. (4-2-08)()

~~01. **Application.** Meet with a vocational rehabilitation counselor and sign the application. An individual is considered to have applied for vocational rehabilitation services with the Commission when that individual has completed the application and acknowledged client rights and responsibilities.~~ **Required Information.** The referring agent shall provide the local ICBVI office with the following information on the referred individual: (4-2-08)()

- a. Full name - required. ()
- b. Address and e-mail address, if available. ()
- c. Telephone numbers where referred individual may be reached - required. ()
- d. Social security number, if available. ()
- e. Date of birth - required. ()
- f. Contact person's name, phone number and referral source, if available. ()
- g. Guardian name, telephone number and address, if available. ()

~~02. **Evidence.** Assist in providing medical and psychological reports to substantiate disability and functional limitations. If the client is an SSA beneficiary, assist in providing evidence of receipt of SSA benefits.~~ **Contact by ICBVI.** Each referred individual must be seen or contacted by ICBVI staff within three (3) working days of the referral's receipt by scheduling an initial appointment, or documentation in a case note of telephone contact or email contact. ICBVI staff will inform the referral of application requirements and information necessary to initiate an assessment for determining eligibility. (4-2-08)()

~~03. **Availability.** Be available to complete assessment process.~~ **Right to Apply.** All individuals have the right to apply for ICBVI VR Services and to have a decision made regarding their eligibility for such services. (4-2-08)()

~~04. **Partner.** Be an active and full partner in the vocational rehabilitation process.~~ **Availability and Residence Requirements.** Individuals must be available and legally permitted to join the labor market prior to eligibility determination. Residence requirements will not exclude any individual present in the state from vocational rehabilitation services. Individuals must have legal status in the United States and be authorized to work. (4-2-08)()

~~05. **Intention.** Intend to achieve an employment outcome.~~ **Work Status and Identity Documentation.** Documents that establish work status (employment eligibility) and identity must be consistent with Form I-9, Immigration and Naturalization Services (Form I-9, Employment Eligibility Verification). (4-2-08)()

~~06. **Application Forms.** A referral or application is not required for an appointment with a VR counselor. An application form shall be supplied upon request from any ICBVI office.~~

Application forms shall be available through referral and outreach programs throughout the state, including the One-Stop Centers. ()

07. Conditions for Applying. An individual is considered to have applied for ICBVI VR Services when the following conditions have been met. The individual, or individual's representative, as appropriate, has: ()

a. Completed and signed an ICBVI VR Application; or ()

b. Signed and dated a request for ICBVI VR Services; or ()

c. Completed a common intake form in a One-Stop Center requesting ICBVI VR Services; or ()

d. Otherwise requested ICBVI VR Services and provides ICBVI the information necessary to initiate an assessment to determine eligibility, is available to complete the assessment process, and intends to achieve an employment outcome. ()

(BREAK IN CONTINUITY OF SECTIONS)

300. PAYMENT POLICY.

01. Upper Limits. In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

a. Education expenses - public in-state institutions. Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: Ninety percent (90%) of the actual costs for two (2) semesters per federal fiscal year at the institution of enrollment. (5-8-09)

b. Education expenses - private in-state institutions. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher. If the client receives any grant or scholarship, it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (5-8-09)

c. Education expenses - out-of-state institutions. Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school: Ninety

percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher. If the client receives any grant or scholarship, it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (5-8-09)

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the “usual and customary” charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study that is closest geographically to the Commission regional office assisting the client. (4-2-08)

d. Books and supplies. Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship, it shall be applied first for tuition or fees, books and supplies, in this order, before any expenditure of funds by the Commission. (5-8-09)

e. Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: Two hundred dollars (\$200) plus actual cost of related procedures such as x-rays. (4-2-08)

ii. Psychological exam by licensed psychologist: Two hundred dollars (\$200) plus actual cost of psychometric tests. (4-2-08)

iii. Ophthalmologist/Optomtrist exam: Two hundred dollars (\$200) plus actual cost of visual field exam or other necessary tests. (4-2-08)

(1) Low vision exam: One hundred twenty-five dollars (\$125). (4-2-08)

(2) Follow-up low vision consultation: Fifty-five dollars (\$55). (4-2-08)

(3) Eye report: Twenty-five dollars (\$25). (4-2-08)

iv. Eye glasses or contact lenses: Eighty dollars (\$80) for frames and the usual and customary cost for lenses and contact lenses. Nine hundred dollars (\$900) for bioptics. (5-8-09)

v. Audiologist exam: Eighty-five dollars (\$85). (4-2-08)

- vi. Physical exam (general basic medical): Sixty-five dollars (\$65). (4-2-08)
- f. Psychotherapy/Counseling sessions: Up to ten (10) hourly sessions at eighty dollars (\$80) per hour. (4-2-08)
- g. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. (4-2-08)
- h. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: Five hundred dollars (\$500) per case. (4-2-08)
- i. Transportation. (4-2-08)
- i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)
- ii. Transportation costs associated with personal vehicle usage with or without personal driver: Two hundred dollars (\$200) per month within a twenty (20) mile radius (in-town commuting) and three hundred dollars (\$300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting). The Commission does not provide funds for a client's purchase of a motor vehicle. (5-8-09)
- iii. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
- j. Maintenance: ~~One~~ Three thousand ~~five hundred~~ dollars (~~\$1,500~~3,000) per federal fiscal year and no more than ~~three~~ five hundred dollars (~~\$3500~~) per month. There is no limit on the number of months a client can receive maintenance up to the ~~one~~ three thousand ~~five hundred~~ dollar (~~\$1,500~~3,000) limit per federal fiscal year. These maximums also apply to room and board for post secondary education and to any rent payments. (4-2-08)()
- i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
- ii. Maintenance for If a client ~~attendance at is participating in the~~ Assessment and Training Center (ATC) ~~and is not commuting to ATC for training, the maximum per month is~~ three hundred dollars (\$300) per ATC term for basic living expenses incurred during the ATC term which are directly related to client's ATC attendance and participation for maintenance up to the three thousand dollars (\$3,000) per federal fiscal year. Over three hundred dollars (\$300) a month or three thousand dollars (\$3,000) per fiscal year requires approval from the VR Services Chief. Maintenance will not be paid during the ATC breaks. (4-2-08)()
- k. Copy fees: Fifteen dollars (\$15) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (4-2-08)
- l. Tools and equipment: One thousand dollars (\$1,000) per case. Value of tools and

equipment provided to client from existing Commission inventory will count towards the one thousand dollar (\$1,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (4-2-08)

m. On-the-Job training fees: Three thousand dollars (\$3,000). (4-2-08)

n. Computers including hardware and software: One thousand dollars (\$1,000) per case. If the Commission determines that a change in computers is necessary, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (4-2-08)

o. Self-employment plans: Three thousand dollars (\$3,000). (4-2-08)

p. Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)

02. Exclusion of Surgery and Organ Transplantation. (4-2-08)

a. The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (4-2-08)

b. The Commission does not provide funds for a client's organ transplantation. (4-2-08)

03. Authorization to Purchase. When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the rehabilitation services chief or the Commission administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (4-2-08)

04. Exception Policy. Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the rehabilitation services chief of the Commission. (4-2-08)

IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

**15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION**

DOCKET NO. 15-0401-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 67-5309, 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 complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 335 through 337.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking has no fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donna Weast at 208-854-3079.

DATED this 30th day of November, 2011.

Vicki Tokita
Administrator
Division of Human Resources
304 N. 8th Street
P.O. Box 83720
Boise, ID 83720-0066
Phone: 208-334-2263
Fax: 208-854-3088

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5309, 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 October 19, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is necessary to reflect the expansion of veterans' preference for disabled veterans to require an interview when their names appear in the top 25 of a hiring list. This change brings the rules into compliance with Title 65 Chapter 5 which was changed in the 2011 legislature.

This rulemaking will properly distinguish that temporary service would apply towards entrance probation and acting appointment service would apply towards promotional probation. This is in line with the legislation that was passed in the 2011 legislature amending Section 67-5309, Idaho Code.

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

To comply with deadlines in amendments to governing law or federal programs. This rulemaking aligns administrative rule with the statute changes adopted by the 2011 Legislature.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the temporary and proposed changes are only to correct the rules so they align with Idaho Code.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Donna Weast at 208-854-3079.

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 October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-1101

102. PLACEMENT ON REGISTER.

01. Score Order. Eligible candidates will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (5-8-09)

02. Veterans' Preference. Eligible veterans or surviving spouses entitled to five (5) point preference will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) (5-8-09)

03. Disabled Veterans' Preference. Eligible ten percent (10%) or more disabled veterans, Purple Heart recipients, or surviving spouses entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. Veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top ~~ten~~ **twenty-five (25)** qualified candidates. If more than ten (10) thirty percent (30%) or greater disabled veterans place in the top ~~ten~~ **twenty-five (25)** qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) ~~(5-8-09)~~()

04. Veterans' Preference Points for Initial Appointment Only. The additional points added by reason of veterans' preference will be used the first time a qualified veteran is hired by a state agency and not for the purpose of promotions. (Ref. Section 65-504, Idaho Code) Initial appointments do not include: (5-8-09)

- a.** Jobs held by patients, inmates, or students employed at a state institution; (5-8-09)
- b.** Temporary or casual employment; or (5-8-09)
- c.** An office filled by election. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

150. PROBATIONARY PERIODS.

01. Probationary Period Required. Except as provided in Section 040 of these rules, every appointment and promotion to a classified position is probationary, or in the absence of adequate registers, provisional. (5-8-09)

02. Types of Probationary Periods. The probationary period serves as a working test period to provide the agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: (5-8-09)

a. Entrance probation is the probationary service required of an employee at the time of his original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

b. Promotional probation is the probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

c. Voluntary probation is an agreement between employees and the appointing authority for interagency employment actions such as reinstatement, transfer, or voluntary demotion. A voluntary probation is not to be used for employment actions within the agency. The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. (5-8-09)

03. Extension of Probationary Period. Upon written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service.

Extension must occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. (Ref. Section 67-5309(j), Idaho Code) (5-8-09)

04. Interruption of Probationary Period. The probationary period in any classification must be completed within a single agency uninterrupted by termination (Ref. Rule Subsection 152.02) or dismissal (Ref. Rule Section 190). An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (5-8-09)

05. ~~Acting and~~ Temporary Service Credit. At the request of the hiring agency, the administrator will allow temporary ~~and acting appointment~~ service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary ~~or acting appointment~~ duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(x), Idaho Code, and Rule Sections 122 ~~and 129~~ and Subsection 150.01) (~~5-8-09~~)()

06. Acting Service Credit. At the request of the hiring agency, the administrator will allow acting appointment service time in a given classification to be used toward fulfilling the promotional probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The acting appointment duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(y), Idaho Code, and Rule Sections 129 and Subsection 150.01) ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1003

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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, Idaho Code, notice is hereby given this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 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 Department of Health and Welfare's Self-Reliance Program has adopted rules to allow electronic and telephonic signatures to improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [December 1, 2010, Idaho Administrative Bulletin, Vol. 10-12, pages 48 and 49.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact for this rule change will be minimal to state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kathy McGill at (208) 334-4934.

DATED this 7th day of April, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

***THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of this temporary rule is **January 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, 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 December 15, 2010.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule:

In recent years, the Department of Health and Welfare's Self-Reliance Program has implemented many technological and process improvements including a new case management system, consolidated service centers, and electronic case records. These improvements have allowed the Department to meet the ever increasing need for services while maintaining quality. In order to further maximize on these improvements, electronic and telephonic signatures will further streamline practices, improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services.

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

The Department closed ten field offices in 2010, reducing the number of locations that customers can access our services. Allowing for electronic and telephonic signatures improves access for our rural state where offices are not always close by and helps to support communities where offices were closed.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The fiscal impact for this rule change will be minimal to state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes confer a benefit.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy McGill at (208) 334-4934.

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 December 22, 2010.

DATED this 5th day of November, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-1003

111. SIGNATURES.

An individual who is applying for benefits, receiving benefits, or providing additional information as required by this chapter, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

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112. -- 119. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, 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 Department is aligning the Eligibility for Health Care Assistance for Families and Children rules with other Department eligibility assistance program rules regarding business processes. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011, Idaho Administrative Bulletin, Vol. 11-10, pages 346 and 347.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kathy McGill at (208) 334-4934.

DATED this 18th day of November, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, 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 October 19, 2011.

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 Department is aligning the Eligibility for Health Care Assistance for Families and Children rules with other Department eligibility assistance program rules regarding business processes. These changes streamline and improve the outcomes for individuals in need of assistance by adding a self-employment standard deduction for allowable expenses and excluding veterans' educational payments.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes are being made to improve outcomes for individuals in need of assistance and improve efficiencies in the Department's business processes.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy McGill at (208) 334-4934.

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 October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-1101

351. SELF-EMPLOYMENT EARNED INCOME.

Income from self-employment is treated as earned income. Countable self-employment income is the difference between the gross receipts and the allowable costs of producing the self-employment income, if the amount is expected to continue. The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses. (3-30-07)(____)

01. Allowable Costs of Producing the Self-Employment Income. Allowable costs of producing the self-employment income include: (3-30-07)

- a. The cost of labor paid to persons not in the home; (3-30-07)
- b. The cost of stock; (3-30-07)
- c. The cost of material; (3-30-07)
- d. The cost for rent and utilities, advertising, shipping and legal fees; (3-30-07)
- e. The cost of seed and fertilizer; (3-30-07)
- f. Interest paid to purchase income-producing property, including real estate; (3-30-07)
- g. Insurance premiums; (3-30-07)
- h. Taxes paid on income-producing property; (3-30-07)
- i. Transportation, when a vehicle is an integral part of business activity; and (3-30-07)
- j. Expenses directly related to producing the goods or services and, without which, the goods or services could not be produced. (3-30-07)

02. Non-Allowable Costs of Producing the Self-Employment Income. The non-allowable costs of producing the self-employment income are: (3-30-07)

- a. Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; (3-30-07)

- b. Net losses from previous periods; (3-30-07)
- c. Federal, State, and local income taxes; (3-30-07)
- d. Money set aside for retirement; (3-30-07)
- e. Personal expenses such as meals and transportation to and from work; (3-30-07)
- f. Personal business, personal entertainment expenses, and personal transportation costs which are not an integral part of business activity; and (3-30-07)
- g. Depreciation. (3-30-07)

03. Self-Employment Standard Deduction. The Department uses a standard self-employment deduction, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the allowable expenses described in Subsection 351.02 of this rule. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment receipts. ()

(BREAK IN CONTINUITY OF SECTIONS)

382. EDUCATIONAL INCOME.

Any student financial assistance provided under Title IV of the Higher Education Act, the Bureau of Indian Affairs education program, Veteran's Administration educational benefits, grants, loans, scholarships, or work study is excluded. ~~(3-30-07)~~()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATES: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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, Idaho Code, notice is hereby given this agency has adopted a pending rule. The action is authorized pursuant to Section 56-1004, 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 Department of Health and Welfare's Self-Reliance Program has adopted rules to allow electronic and telephonic signatures to improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the December 1, 2010, Idaho Administrative Bulletin, Vol. 10-12, pages 50 and 51.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact for this rule change will be minimal to state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kandace Yearsley at (208) 334-0620.

DATED this 7th day of April, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

This docket published in the [December 1, 2010 Idaho, Administrative Bulletin, Vol. 10-12](#)

EFFECTIVE DATE: The effective date of this temporary rule is **January 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-1004, 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 December 15, 2010.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In recent years, the Department of Health and Welfare's Self-Reliance Program has implemented many technological and process improvements including a new case management system, consolidated service centers, and electronic case records. These improvements have allowed the Department to meet the ever increasing need for services while maintaining quality. In order to further maximize on these improvements, electronic and telephonic signatures will further streamline practices, improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services.

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

The Department closed ten field offices in 2010, reducing the number of locations that customers can access our services. Allowing for electronic and telephonic signatures improves access for our rural state where offices are not always close by and helps to support communities where offices were closed.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The fiscal impact for this rule change will be minimal to state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes confer a benefit.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kandace Yearsley at (208) 334-0620.

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 December 22, 2010.

DATED this 5th day of November, 2010.

Tamara Prisock
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-1001

206. -- ~~299~~. (RESERVED).

299. SIGNATURES.

An individual who is applying for benefits, receiving benefits, or providing additional information as required by this chapter, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

(1-1-11)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-1004

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATES: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 this agency has adopted a pending rule. The action is authorized pursuant to Section 56-203, 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 Department of Health and Welfare's Self-Reliance Program has adopted rules to allow electronic and telephonic signatures to improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the December 1, 2010, Idaho Administrative Bulletin, Vol. 10-12, pages 54 and 55.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact for this rule change will be minimal to state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Rosie Andueza at (208) 334-5553.

DATED this 7th day of April, 2011.

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THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is **January 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-203, 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 December 15, 2010.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In recent years, the Department of Health and Welfare's Self-Reliance Program has implemented many technological and process improvements including a new case management system, consolidated service centers, and electronic case records. These improvements have allowed the Department to meet the ever increasing need for services while maintaining quality. In order to further maximize on these improvements, electronic and telephonic signatures will further streamline practices, improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services.

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

The Department closed ten field offices in 2010, reducing the number of locations that customers can access our services. Allowing for electronic and telephonic signatures improves access for our rural state where offices are not always close by and helps to support communities where offices were closed.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The fiscal impact for this rule change will be minimal to state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes confer a benefit.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

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 December 22, 2010.

DATED this 5th day of November, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1004

015. -- 0998. (RESERVED).

099. SIGNATURES.

An individual who is applying for benefits, receiving benefits, or providing additional information as required by this chapter, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1101
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendments to the temporary rule is **February 1, 2011**. This pending rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 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 56-203, Idaho Code, and 7 CFR Part 273.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the 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:

Rule changes were made in this chapter to allow households to conduct business with the Department electronically, and allow the Department to e-mail notices to participants. Rule changes were also made to streamline the process for determining student eligibility, as well as the recertification process for simplified reporting households. Finally, rule changes were made to add a Job Search Assistance Program (JSAP) exemption for women who are in their third trimester of pregnancy, to refine the definition of prohibited participation, and to ensure that Idaho is in compliance with federal food stamp regulations.

Amendments are being made to the temporary and pending rule in response to feedback from the federal Food and Nutrition Service (FNS). Some of the previously proposed changes have been removed as they would have inadvertently imposed additional requirements that would necessitate costly automation and a need for increased staffing resources in order to implement.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [October 5, 2011, Idaho Administrative Bulletin, Vol. 11-10, pages 348 through 364.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact due to these rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule and the amendments to temporary rule, contact Rosie Andueza at (208) 334-5553.

DATED this 21st day of November, 2011.

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**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective dates of the temporary rules are: **February 1, 2011, March 1, 2011, and November 1, 2011.**

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 56-203, Idaho Code, and 7 CFR Part 273.

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 October 19, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule changes are being made in this chapter to allow households to conduct business with the Department electronically and allow the Department to e-mail notices to participants. Rule changes are also needed to streamline the process for determining student eligibility, as well as the recertification process for simplified reporting households. Finally, rule changes are needed to add a Job Search Assistance Program (JSAP) exemption for

women who are in their third trimester of pregnancy, to refine the definition of prohibited participation, and to ensure that Idaho is in compliance with federal food stamp regulations.

Specifically, this includes:

1. Allow the Department to send eligibility notices electronically to participants who voluntarily chose an electronic method of communication.

2. Average student hours over the month, rather than by the week, when determining food stamp eligibility. This will simplify the business process for the Department and increase participation among students by allowing them flexibility to schedule their work hours around academic responsibilities and remain eligible for food stamps.

3. Allow for the interview requirement to be waived at the 6-month recertification in certain cases, allowing for written contact and subsequent verification of the participant's circumstances in lieu of the interview. This streamlines the recertification process for participants and staff by allowing for a higher completion rate, and resulting in fewer new applications (which are more labor and time intensive than the 6-month recertification).

4. Exempt women from JSAP who are in their third trimester of pregnancy, due to the difficulty in gaining employment in advanced stages of pregnancy.

5. Prohibit a child from receiving Temporary Assistance for Families in Idaho (TAFI) with one caretaker relative while receiving Food Stamps in another household. This allows the Department to proactively end participation for children who would otherwise create an overpayment resulting in subsequent hardship for the family involved.

6. Extend the penalty period for participants who refuse to cooperate with a state quality control review per federal rule change.

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

Some changes comply with deadlines in amendments to governing law or federal programs (due to changes in 7 CFR Part 273), and the rest confer benefits to Food Stamp participants.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to bring this chapter of rules into compliance with 7 CFR Part 273, and to streamline and update the Food Stamps Program thereby conferring benefits to Food Stamp participants.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

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 October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1101

010. DEFINITIONS A THROUGH D.

For the Food Stamp Program, the following definitions apply: (4-11-06)

01. Adequate Notice. Notice a household must receive on or before the first day of the month an action by the Department is effective. (4-6-05)

02. Administrative Error Claim. A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)

03. Aid to the Aged, Blind and Disabled (AABD). Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. (4-11-06)

04. Applicant. A person applying for Food Stamps. (6-1-94)

05. Application for Participation. The application form filed by the head of the household or authorized representative. (6-1-94)

06. Application for Recertification. When a household applies for recertification within thirty (30) days of the end of the certification period, it is considered an application for recertification even if a partial month of benefits is received. (4-11-06)

07. Authorized Representative. A person designated by the household to act on behalf of the household to apply for or receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include

battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (4-11-06)

08. Battered Women and Children's Shelter. A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)

09. Boarder. Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)

10. Boarding House. A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)

11. Categorical Eligibility. If all household members receive or are authorized to receive monthly cash payment through TAFI, AABD or SSI, the household is categorically eligible. Categorically eligible households are exempt from resource, gross and net income eligibility standards. (4-11-06)

12. Certification Determination. Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure prompt, efficient and correct certifications. (6-1-94)

13. Certification Period. The period of time a household is certified to receive Food Stamp benefits. The month of application counts as the first month of certification. (4-11-06)

14. Contact (Six-Month). A six-month contact is a recertification that waives the interview requirement, allowing for written contact and verification of the participant's circumstances in lieu of the interview. ()

145. Claim Determination. The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)

156. Client. A person entitled to or receiving Food Stamps. (6-1-94)

167. Department. The Idaho Department of Health and Welfare. (6-1-94)

~~**17. Desk Review.** A desk review is a recertification that may or may not include talking to the participant. (4-11-06)~~

18. Disqualified Household Members. Individuals required to be excluded from participation in the Food Stamp Program are Disqualified Household Members. These include: (6-1-94)

a. Ineligible legal non-citizen who do not meet the citizenship or eligible legal non-citizen requirements. (7-1-98)

- b.** Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)
 - c.** Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)
 - d.** Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)
 - e.** Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)
 - f.** Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)
 - g.** Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)
 - h.** Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)
 - i.** Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use, or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole. The felony must have occurred after August 22, 1996. (3-30-01)
- 19. Documentation.** The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)
- 20. Drug Addiction or Alcoholic Treatment Program.** Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

012. DEFINITIONS M THROUGH Z.

For the Food Stamp Program, the following definitions apply: (4-11-06)

01. Migrant Farmworker Household. A migrant farmworker household has a member who travels from community to community to do agricultural work. (4-6-05)

- 02. Minimum Utility Allowance (MUA).** Utility deduction given to a food stamp household that has a cost for one (1) utility that is not heating, cooling, or telephone. (3-29-10)
- 03. Nonexempt.** A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)
- 04. Nonprofit Meal Delivery Service.** A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)
- 05. Overissuance.** The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)
- 06. Parental Control.** Parental control means that an adult household member has a minor in the household who is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (4-6-05)
- 07. Participant.** A person who receives Food Stamp benefits. (4-6-05)
- 08. Program.** The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)
- 09. Public Assistance.** Public assistance means Temporary Assistance for Families in Idaho (TAFI), and Aid to the Aged, Blind, and Disabled (AABD). (4-6-05)
- 10. Recertification.** A recertification is a process for determining ongoing eligibility for Food Stamps. (4-11-06)
- 11. Retail Food Store.** A retail food store, for Food Stamp purposes means: (6-1-94)
- a.** An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)
 - b.** Public or private communal dining facilities and meal delivery services. (6-1-94)
 - c.** Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)
 - d.** Public or private nonprofit group living arrangements. (6-1-94)
 - e.** Public or private nonprofit shelters for battered women and children. (6-1-94)
 - f.** Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)
 - g.** A farmers' market. (6-1-94)

- h.** An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-98)
- 12. Sanction.** A penalty period when an individual is ineligible for Food Stamps. (3-30-07)
- 13. Seasonal Farmworker Household.** A seasonal farmworker household has a member who does agricultural work of a seasonal or other temporary nature. (4-6-05)
- 14. Spouse.** Persons who are living together, married or free to marry, and are holding themselves out as man and wife. (4-6-05)
- 15. Standard Utility Allowance (SUA).** Utility deduction given to a food stamp household that has a cost for heating or cooling. (4-11-06)
- 16. State.** Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)
- 17. State Agency.** The Idaho Department of Health and Welfare. (6-1-94)
- 18. Student.** An individual between the ages of eighteen (18) and fifty (50), physically and intellectually fit, and enrolled at least half-time in an institution of higher education. (6-1-94)
- 19. Supplemental Security Income (SSI).** Monthly cash payments under Title XVI of the Social Security Act. Payments include state or federally administered supplements. (4-11-06)
- 20. Systematic Alien Verification for Entitlements (SAVE).** The federal automated system that provides immigration status needed to determine an applicant's eligibility for many public benefits, including Food Stamps. (4-11-06)
- 21. Telephone Utility Allowance (TUA).** Utility deduction given to a Food Stamp household that has a cost for telephone services and no other utilities. (3-29-10)
- 22. Timely Notice.** Notice that is mailed via the U. S. Postal Service, or electronically, at least ten (10) days before the effective date of an action taken by the Department. ~~(4-6-05)~~()
- 23. Twelve Month Contact.** For households that have a twenty-four (24) month certification period, Department staff contact the household during the twelfth month of the certification period for the purpose of determining continued eligibility. (4-6-05)
- 24. Tribal General Assistance.** Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. This cash is intended to promote the health and well-being of recipients. (4-11-06)
- 25. Verification.** The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)

26. Verified Upon Receipt. Food stamp benefits are adjusted on open food stamp cases when information is received from “verified upon receipt” sources. Information “verified upon receipt” is received from a manual query or automated system match with the Social Security Administration or Homeland Security query for citizenship status. (3-30-07)

27. Written Notice. Correspondence that is generated by any method including handwritten, typed, or electronic, delivered to the customer by hand, U.S. Mail, professional delivery service, or by any electronic means. The terms “notice” and “written notice” are used interchangeably. ()

(BREAK IN CONTINUITY OF SECTIONS)

113. HOUSEHOLD COOPERATION.

The household must cooperate with the Department. The application must be denied if the household refuses to cooperate. Refusal to cooperate includes failing to act without a sound and timely excuse. Giving false information on purpose is failure to cooperate. The Department must show false information was given on purpose before denying the application. The household is ineligible if it refuses to cooperate in a ~~later review~~ six-month or twelve-month contact, recertification, program review or evaluation. If an application is denied or Food Stamps are stopped for refusal to cooperate, the household can reapply. The household is not eligible until it cooperates with the Department. (6-1-94)()

(BREAK IN CONTINUITY OF SECTIONS)

137. PROOF FOR QUESTIONABLE INFORMATION.

Prior to the certification, a six-month or twelve-month contact, or recertification of the household, the Department must verify all questionable information regarding eligibility and benefit level. Proof is required when details are not consistent with information received by the Department. Proof may be obtained either verbally or in writing. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

162. EXPEDITED SERVICES FOR DESTITUTE HOUSEHOLDS.

Migrant or seasonal farmworker households meeting destitute conditions below can get expedited services. The rules for destitute households apply at initial application, the six-month or twelve-month contact, and recertification, but only for the first month of each contact or certification period. (7-1-97)()

01. Terminated Source of Income. The household’s only income for the application

month was received before the application date and was from a terminated source. The household is considered destitute. Terminated income is income received monthly or more often, no longer received from the same source the rest of the application month or the next month or income received less often than monthly, not expected in the month the next regular payment is normally due. (6-1-94)

02. New Income in Application Month. When only new income is expected in the application month, the household is considered destitute. Only twenty-five dollars (\$25), or less, of new income can be received in the ten (10) days after the application date. Income is new if twenty-five dollars (\$25), or less, is received during the thirty (30) days before the application date. New income received less often than monthly was not received in the last normal payment interval or was twenty-five dollars (\$25) or less. (6-1-94)

03. Terminated Income and New Income in Application Month. Destitute households can get terminated income before the application date and new income before and after the application date. New income must not be received for ten (10) days after application and must not exceed twenty-five dollars (\$25). The household must get no other income in the application month. (6-1-94)

04. Application Month. For the application month, count only income received between the first day of the month and the application date. Do not count income from a new source expected after the application date. (6-1-94)

163. SPECIAL CONSIDERATION OF INCOME FOR DESTITUTE HOUSEHOLDS. Special consideration of income for destitute households is listed below. The rules for destitute households apply at initial application, a six-month or twelve-month contact, and recertification, but only for the first month of each contact or certification period. (7-1-97)()

01. Travel Advances. For destitute eligibility and benefit level, travel advances apply as follows: Travel advances from employers for travel costs to a new employment location are excluded. Travel advances against future wages are counted as income, but not a new source of income. (6-1-94)

02. Household Member Changes Job. A person changing jobs with the same employer is still getting income from the same source. A migrant's income source is the grower, not the crew chief. When a migrant moves with a crew chief from one (1) grower to another, the income from the first grower is ended. The income from the next grower is new income. (6-1-94)

03. Recertification or Six-Month or Twelve-Month Contact. Disregard income from the new source for the first month of the new certification period if more than twenty-five dollars (\$25) will not be received by the tenth calendar day after the normal issuance. (6-1-94)()

(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. Each SSN must be verified by the Social Security Administration (SSA). A household member with an unverified SSN is not eligible for Food Stamp benefits. The ineligible person's income and resources must be counted in the Food Stamp budget. If benefits are reduced or ended, because one (1) or more persons fail to meet the SSN requirement, the household must be notified in writing. (3-20-04)

01. Application for SSN. (3-20-04)

a. If a household member does not have an SSN, he must apply for an SSN. After the household member files the SSN application, he may receive Food Stamp benefits while the SSN is assigned. (3-20-04)

b. If a household member is unable to provide his SSN, he must apply for a duplicate SSN card. (3-20-04)

c. If a household member does not know if he has an SSN, he must apply for an SSN. (3-20-04)

d. If a household member has a questionable SSN, he must apply for an SSN. (3-20-04)

e. If the person is unable to get the proof required by SSA for an SSN, the Department will help the person get proof. (3-20-04)

02. Proof of Application for an SSN for a Newborn. A newborn may receive Food Stamp benefits 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 Food Stamp six-month or twelve-month contact or recertification or six (6) months after the month the child was born, whichever is later. If the household does not provide proof of SSN or application for SSN, the child will be ineligible to receive Food Stamp benefits the month following the month the household failed to provide the proof. ~~(3-20-04)~~()

03. SSN Requirements for Expedited Food Stamp Service. Households entitled to expedited service under the criteria in Section 155 of this chapter of rules will be asked to furnish an SSN or proof of application for SSN for each person in the household applying for benefits before the first day of the second full month of Food Stamp participation. Those household members unable to provide the SSN or who do not have one prior to the second full month of participation may be allowed to continue to participate only if they satisfy the good cause requirements in Subsections 203.04.a. through 203.04.c. of this rule. (3-20-04)

04. Good Cause for Not Applying for SSN. If a household member can show good cause why an SSN application was not completed in a timely manner, an extension must be granted to allow him to receive Food Stamp benefits for one (1) month in addition to the month of application. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Good cause is described below: (3-20-04)

a. Good cause exists if the application for SSN was not processed in a timely manner by the SSA. (3-20-04)

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)

05. Exception for Religious Objection. The Department may assign an identification number to a person who is applying for Food Stamps, but who, because of well-established religious objections as defined under 42 CFR 435.910, refuses to obtain an SSN. The identification number may be either an SSN obtained by the Department on the applicant's behalf or another unique identifier. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

219. CIRCUMSTANCES UNDER WHICH FOOD STAMP PARTICIPATION IS PROHIBITED.

01. Prohibition from Receiving Food Stamp Benefits. An individual is prohibited from receiving Food Stamp benefits at the time of application if he: (4-7-11)

a. Receives tribal commodities; (4-6-05)

b. Is incarcerated; (4-6-05)

c. Is in an institution; (4-6-05)

d. Is in foster care and the foster parents are receiving a cash benefit for providing care and maintenance for the child; (4-7-11)

e. Receives Food Stamp benefits in another household; ~~or~~ (~~4-7-11~~)()

f. Is deceased; ~~or~~ (~~4-7-11~~)()

g. Receives cash benefits in a TAFI Caretaker Relative household. ()

02. Prohibited Participation During the Certification Period. If the Department learns of prohibited participation during the certification period, it will act to end benefits for that individual. (4-7-11)

220. (RESERVED)

221. DETERMINATION OF HOUSEHOLD COMPOSITION.

Household composition must be determined at application, a six-month or twelve-month contact, recertification, and when a reported change in household members would result in an increase in the food stamp benefits. ~~(3-29-10)~~()

222. -- 225. (RESERVED)

226. JOB SEARCH ASSISTANCE PROGRAM (JSAP).

The JSAP program is designed to help Food Stamp recipients become self-sufficient. (7-1-99)

01. JSAP Status. All household members, unless exempt, must participate in JSAP. Household members who are on strike must participate in JSAP. Members who are not migrants in the job stream must participate in JSAP. Determine the JSAP status of a participant at certification, a six-month or twelve-month contact, recertification, and when household changes occur. ~~(7-1-99)~~()

02. JSAP Information. Explain, both in writing and orally, the JSAP requirement, rights, responsibilities, and the result of failure to comply. (7-1-99)

227. EXEMPTIONS FROM JSAP.

Exemptions from JSAP are listed in Subsections 227.01 through 227.12 of these rules. (5-3-03)

01. Parents or Caretakers of a Child Under Six Years of Age. A parent or caretaker responsible for the care of a dependent child under age six (6) is exempt from JSAP. If the child becomes six (6) during the certification period, the parent or caretaker must register for JSAP at the next scheduled six-month or twelve-month contact or recertification, unless exempt for another reason. ~~(5-3-03)~~()

02. Parents and Caretakers of an Incapacitated Person. A parent or caretaker responsible for the care of a person incapacitated due to illness or disability is exempt from JSAP. (5-3-03)

03. Persons Who Are Incapacitated. A person who is physically or intellectually unfit for employment is exempt from JSAP. If a disability is claimed which is not evident, proof to support the disability can be required. Acceptable proof includes receipt of permanent or temporary disability benefits, or a statement from a physician or licensed or certified psychologist. (5-3-03)

04. Students Enrolled Half Time. A student who is eighteen (18) years or older is exempt from JSAP if: (4-11-06)

a. He is enrolled at least half-time in any institution of higher learning and if he meets the definition of an eligible student in Section 282 of these rules; or (5-3-03)

b. He is enrolled at least half-time in any other recognized school or training program. (5-3-03)

c. He remains enrolled during normal periods of class attendance, vacation, and

recess. If he graduates, enrolls less than half-time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), he must register for work at the next scheduled six-month or twelve-month contact or recertification. ~~(4-11-06)~~()

05. SSI Applicants. A person who is applying for SSI is exempt from JSAP until SSI eligibility is determined. (5-3-03)

06. Persons Who Are Employed. A person who is employed is exempt from JSAP if: (5-3-03)

a. He is working at least thirty (30) hours per week; or (5-3-03)

b. He is receiving earnings equal to the Federal minimum wage multiplied by thirty (30) hours; or (5-3-03)

c. He is a migrant or seasonal farm worker under contract or agreement to begin employment within thirty (30) days. (5-3-03)

07. Persons Who Are Self-Employed. A person who is self-employed is exempt from JSAP if he is working a minimum of thirty (30) hours per week or is receiving earnings equal to or greater than the Federal minimum wage multiplied by thirty (30) hours. (5-3-03)

08. Addicts or Alcoholics. A regular participant in a drug or alcohol treatment and rehabilitation program is exempt from JSAP. (6-1-94)

09. Unemployment Insurance (UI) Applicant/Recipient. A person receiving UI is exempt from JSAP. A person applying for, but not receiving UI, is exempt from JSAP if he is required to register for work with the Department of Commerce and Labor as part of the UI application process. (5-3-03)

10. Children Under Age Sixteen. A child under age sixteen (16) is exempt from JSAP. A child who turns sixteen (16) within a certification period must register for JSAP at the six-month or twelve-month contact or recertification, unless exempt for another reason. ~~(5-3-03)~~()

11. Persons Age Sixteen or Seventeen. A household member age sixteen (16) or seventeen (17) is exempt from JSAP if he is attending school at least half-time, or is enrolled in an employment and training program, including GED, at least half-time. (5-3-03)

12. Participants Age Sixty or Older. A participant age sixty (60) or older is exempt from JSAP. (5-3-03)

13. Pregnant Women. A pregnant woman in her third trimester is exempt from JSAP. ()

(BREAK IN CONTINUITY OF SECTIONS)

272. VOLUNTARY QUIT OR REDUCTION OF WORK HOURS DURING THE LAST MONTH OF THE CERTIFICATION PERIOD.

If the Department determines a member of the household voluntarily quit a job or reduced work hours, without good cause, in the last month of the six-month or twelve-month contact or certification period the voluntary quit or work reduction penalty is imposed. ~~(7-1-98)~~()

01. No Reapplication. If the household does not apply for recertification in the last month of the six-month or twelve-month contact or certification, the appropriate penalty is imposed. Begin the penalty the first month after the last month of the certification. The penalty is in effect should the household apply during the penalty period. ~~(7-1-98)~~()

02. Reapplication. If the household does apply for recertification in the last month of the six-month or twelve-month contact or certification period, the person quitting work or reducing hours is ineligible. The penalty is imposed, beginning the first month after the last month of the six-month or twelve-month contact or certification period. ~~(4-5-00)~~()

(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. ()

a. The student is employed a minimum of ~~twenty eighty~~ (280) hours per ~~week~~ month and is paid for such employment: or ()

b. The student is self-employed a minimum of ~~twenty eighty~~ (280) hours per ~~week~~ month; and ()

c. The student must earn at least the Federal minimum wage times ~~twenty eighty~~ (280) 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 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. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

303. COUNTING RESOURCES.

At the time of application, a six-month or twelve-month contact, or recertification, a household must report all countable resources it has. Resources are identified and evaluated, as of the Food Stamp interview date, to determine if they are counted or excluded. (~~4-7-11~~)()

(BREAK IN CONTINUITY OF SECTIONS)

351. EXCLUDED RESOURCES.

Some resources do not count against the limit because they are excluded. Resources excluded by federal law are also excluded for Food Stamps. Exclusions from resources are listed in Sections 352 through ~~370~~82. (~~6-1-94~~)()

(BREAK IN CONTINUITY OF SECTIONS)

389. REPORTING RESOURCES.

Households receiving food stamps must report resource changes at each recertification, or at a six-month or twelve-month contact. (~~3-29-10~~)()

(BREAK IN CONTINUITY OF SECTIONS)

405. EXCLUDED INCOME.

Income excluded when computing Food Stamp eligibility is listed below: (6-1-94)

01. Money Withheld. Money withheld voluntarily or involuntarily, from an assistance payment, earned income, or other income source, to repay an overpayment from that income source, is excluded. If an intentional noncompliance penalty results in a decrease of benefits under a means tested program such as SSI or GA, count that portion of the benefit decrease attributed to the repayment as income. (7-1-98)

02. Child Support Payments. Child support payments received by TAFI recipients which must be given to CSS are excluded as income. (7-1-98)

03. Earnings of Child Under Age Eighteen Attending School. Earned income of a household member under age eighteen (18) is excluded. The member must be under parental control of another household member and attending elementary or secondary school. For the purposes of this provision, an elementary or secondary student is someone who attends elementary or secondary school or who attends GED or home-school classes that are recognized, operated, or supervised by the school district. This exclusion applies during semester and summer vacations if enrollment will resume after the break. If the earnings of the child and other household members cannot be differentiated, prorate equally among the working members and exclude the child's share. (7-1-98)

04. Retirement Benefits Paid to Former Spouse or Third Party. Social Security retirement benefits based on the household member's former employment, but paid directly to an ex-spouse, are excluded as the household member's income. Military retirement pay diverted by court order to a household member's former spouse is excluded as the household member's income. Any retirement paid directly to a third party from a household member's income by a court order is excluded as the household member's income. (6-1-94)

05. Infrequent or Irregular Income. Income received occasionally is excluded as income if it does not exceed thirty dollars (\$30) total in a three (3) month period. (6-1-94)

06. Cash Donations. Cash donations based on need and received from one (1) or more private nonprofit charitable organizations are excluded as income. The donations must not exceed three hundred dollars (\$300) in a calendar quarter of a federal fiscal year (FFY). (6-1-94)

07. Income in Kind. Any gain or benefit, such as meals, garden produce, clothing, or shelter, not paid in money, is excluded as income. (6-1-94)

08. Vendor Payments. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. (3-20-04)

09. Third Party Payments. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall

be excluded from income. (3-20-04)

10. Loans. Loans are money received which is to be repaid. Loans are excluded as income. (6-1-94)

11. Money for Third Party Care. Money received and used for the care and maintenance of a third party who is not in the household. If a single payment is for both household members and nonhousehold members the identifiable portion of the payment for nonhousehold members is excluded. If a single payment is for both household members and nonhousehold members, exclude the lesser of: (6-1-94)

a. The prorated share of the nonhousehold members if the portion cannot be identified. (6-1-94)

b. The amount actually used for the care and maintenance of the nonhousehold members. (6-1-94)

12. Reimbursements. Reimbursements for past or future expenses not exceeding actual costs. Payments must not represent a gain or benefit. Payments must be used for the purpose intended and for other than normal living expenses. Excluded reimbursements are not limited to: (6-1-94)

a. Travel, per diem, and uniforms for job or training. (6-1-94)

b. Out-of-pocket expenses of volunteer workers. (6-1-94)

c. Medical and dependent care expenses. (6-1-94)

d. Pay for services provided by Title XX of the Social Security Act. (6-1-94)

e. Repayment of loans made by the household from their personal property limit. The repayment must not exceed the amount of the loan. (6-1-94)

f. Work-related and dependent care expenses paid by the JSAP program. (6-1-94)

g. Transitional child care payments. (6-1-94)

h. Child care payments under the Child Care and Dependent Block Grant Act of 1990. (6-1-94)

13. Federal Earned Income Tax Credit (EITC). Federal EITC payments are excluded as income. (9-1-94)

14. Work Study. Work Study income received while attending post-secondary school is excluded as income. (3-20-04)

15. HUD Family Self-Sufficiency (FSS) Escrow Account. The federal exclusion for these funds are only excluded while the funds are in the escrow account or being used for a HUD

approved purpose. See Section 363 of these rules for further clarification. (4-11-06)

16. Temporary Census Earnings. Wages earned for temporary employment related to U. S. Census activities are excluded as income during the regularly scheduled ten (10) year U. S. Census. (4-7-11)

17. Income Excluded by Federal Law. If income is excluded by federal law, it is excluded for Food Stamps. ()

(BREAK IN CONTINUITY OF SECTIONS)

500. FOOD STAMP BENEFIT DETERMINATION.

Food Stamp benefits are determined at application, a six-month or twelve-month contact, recertification, and when a change is reported. Benefit determination requires two separate actions. First, determine if the household is eligible for Food Stamps. Second, if the household is eligible, compute the Food Stamp issuance. Use the household's projected resources, income, expenses, and household composition to determine eligibility and Food Stamp amount. Use the household's past and current income, resources, expenses, and household composition to project future circumstances. (6-1-94)()

501. INITIAL CHANGES IN FOOD STAMP CASE.

Act on changes in household circumstances found during the application or the initial interview. (6-1-94)

01. Anticipated Changes. A household can be eligible in the application month, but not eligible the month after the application month because of expected changes in circumstances. The household may not be eligible for the application month, but eligible for the next month. The same application form is used for the denial and the next month's eligibility determination. (6-1-94)

02. Food Stamps for the Application Month. The household's Food Stamp issuance for the application month may differ from its issuance in later months. (6-1-94)

03. Food Stamp Issuance Changes. The Department will make changes to the household's Food Stamp issuance when it is required to act on a change. (3-30-07)

04. Change Before Certification. If a household reports a change in household circumstances before certification and the Department can act on the change, include the reported information in determining Food Stamp eligibility and amount. (6-1-94)

05. Change After Certification. If a household reports a change after the initial Food Stamp benefit has been paid, the Department must act on the change if it was required to be reported or would increase the household's Food Stamp benefits under these rules. Changes in the household's expenses will not be acted upon until a six-month or twelve-month contact, or recertification. Notice of the change must be given to the Food Stamp household. (4-6-05)()

502. EARNED INCOME WHEN A HOUSEHOLD MEMBER TURNS AGE EIGHTEEN.

When a child attending elementary or secondary school turns age eighteen (18), do not count earned income received or expected by that person until the next six-month or twelve-month contact, or recertification. ~~(4-11-06)~~()

(BREAK IN CONTINUITY OF SECTIONS)

573. ACTING ON HOUSEHOLD COMPOSITION CHANGES.

Changes in household composition are not required to be reported. If a household does report a change in household composition, and the change would increase the Food Stamp benefit, proof is needed to act on the change. If proof is provided within ten (10) days, increase the Food Stamp benefits beginning the month immediately following when the change was reported. If proof is not provided within ten (10) days, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next six-month or twelve-month contact, or recertification ~~or twelve-month (12) contact.~~ ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

576. CERTIFICATION PERIODS.

A certification period must be assigned for each household. Households must be assigned a certification period based on household circumstances at the time of application approval, recertification, and at the six-month or twelve-month contact in accordance with 7 CFR 273.10(f) and 273.12. Households are assigned a six ~~(6)~~-month certification period unless they meet the criteria for extended certification, in which case they are assigned a twenty-four (24) month certification period. At the end of each six-month or twelve-month contact or certification period, entitlement to Food Stamps ends. Further eligibility starts only upon successful completion of a six-month or twelve-month contact, or a recertification based upon a newly completed application, an interview, and verification. The certification period cannot be lengthened nor can benefits be continued beyond the end of a certification period without a new determination of eligibility. ~~(3-29-10)~~()

577. CHANGING THE CERTIFICATION PERIOD.

If a household has ~~an extended~~ a twenty-four-month certification period, and at the twelve-month contact it is determined that they remain eligible but they no longer meet the criteria for extended certification, the current certification will be ended and a six-month certification period will be assigned for ongoing benefits ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

611. TIME FRAMES FOR REPORTING CHANGES IN HOUSEHOLD CIRCUMSTANCES.

Households must report changes in circumstances as required in Section 601 of these rules. Households reporting required changes to the Department must do so by the tenth day of the month following the month in which the change occurred. (3-29-10)

01. Must Not Impose Added Reporting Requirements. The Department must not require additional household reporting not listed in these rules. (6-1-94)

02. Report Form. The Department must give households a Change Report Form at certification, at the six-month or twelve-month contact, at recertification, when the household reports a change, and when the household requests the form. ~~(3-29-10)~~()

03. Reporting Methods. Changes can be reported by telephone, personal contact, mail, or e-mail. Changes can be reported by a household member or authorized representative. (3-29-10)

04. Failure to Report. If Food Stamps are overissued because a household fails to report required changes, a Claim Determination must be prepared. A person can be disqualified for failure to report a change if he commits an Intentional Program Violation. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

615. CHANGES IN SHELTER, DEPENDENT CARE, CHILD SUPPORT, OR MEDICAL EXPENSES.

A household reporting a change in shelter, utility, dependent care, child support, or medical expenses will be not required to provide proof of the change until recertification ~~or~~ and the six-month or twelve-month contact. The Department will not adjust the Food Stamp benefit during the certification period regardless of whether the change in expenses would cause the Food Stamp benefit to increase or decrease. ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

619. CHANGES NOT REQUIRED TO BE REPORTED.

If the household reports a change not required to be reported that would result in a decrease in Food Stamp benefits, the Department will not request proof and will not take action until recertification and the six-month or twelve-month contact. The household must be notified that no action will be taken on the reported change. ~~(4-11-06)~~()

(BREAK IN CONTINUITY OF SECTIONS)

646. NOTICE OF DECISION FOR TIMELY RECERTIFICATION.

A Notice of Decision must be sent to households that reapply for Food Stamps. To receive Food Stamps with no break in issuance, households must ~~apply for~~ complete a six-month or twelve-month contact or recertification before the fifteenth day of the last month of certification or six-month or twelve-month contact period. If the household applies before the fifteenth day of the month, the Department will notify the household of eligibility or denial by the end of the current certification period. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

793. NARCOTIC ADDICT AND ALCOHOLIC TREATMENT CENTERS.

Narcotic addicts and their children residing in a treatment center may qualify for Food Stamps. Alcoholics and their children residing in a treatment center may qualify for Food Stamps. Food Stamp rules for residents in a drug addiction or alcohol treatment and rehabilitation program lasting at least thirty (30) days are listed below: (9-1-94)

01. Optional Appointment of Authorized Representative. Unless the household requests it, the center will not be made authorized representative on the household's own EBT card for months of benefits received while not in the center. (4-5-00)

02. Center Provides Certification List. Each month, each center must give the Field Office a list of current client residents. The list's accuracy must be certified in writing by the center manager or designee. The Department must conduct random on-site visits to assure list accuracy. If the list is not accurate, or the Department fails to act on the change, the Department may transfer the Food Stamp amount from the center's account to the household's Food Stamp account, for the months the household was not living in the center. (4-5-00)

03. Resident and Nonresident Clients. Eligible narcotic addicts or alcoholics must be certified as one (1) person households. Eligible narcotic addicts with children or alcoholics with children residing in a center must be certified as one (1) household. Clients not residing at the treatment center are certified under normal procedures. (9-1-94)

04. Food Stamp Basis. Eligibility and Food Stamp amounts must be based on income and resources. (6-1-94)

05. Work Registration. Resident clients are exempt from work registration. (6-1-94)

06. Expedited Processing. When the application needs expedited processing, Food Stamps must be received by the seventh calendar day after the application date. (7-1-98)

07. Normal Processing. If processing under normal procedures, the Department must verify circumstances before determining eligibility. Changes, six-month or twelve-month

contacts, and recertifications are processed using the standards for all other households. Resident clients have the same rights to adverse action notices, fair hearings and lost Food Stamps as all other households. (6-1-94)()

08. Center Misusing Food Stamps. The Department must promptly notify FCS if it believes a center is misusing Food Stamps. The Department must not take action before FCS takes action against the center. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

883. QUALITY CONTROL AND FOOD STAMP ELIGIBILITY.

State Quality Control (SQC) is the Department's case review system. SQC determines rates of correct Food Stamp issuances and Department and recipient caused errors. Quality control reviews open Food Stamp cases, denials and closures. The quality control review period extends from October 1st to September 30th of the next year. Households selected for quality control review by State Quality Control (SQC) and Federal Quality Control (FQC) must cooperate with both reviews. If a household refuses to cooperate in a SQC or FQC review, it is ineligible for Food Stamps as shown below: (3-30-07)

01. Refusal to Cooperate with SQC or FQC. If a household refuses to cooperate in a SQC or FQC review, it is not eligible. The SQC analyst or FQC reviewer must notify the appropriate Department Self Reliance Specialist (SRS) of the household's refusal to cooperate. (3-30-07)

a. The Department must send the household advance notice to end Food Stamps. The notice must list the reason for the proposed action, the right to a hearing, the right to schedule a conference or to continue the SQC or FQC review. (3-30-07)

b. The Department will close the Food Stamp case. (6-1-94)

02. Food Stamp Eligibility During Quality Control Review Period, After Refusal to Cooperate. The household is not eligible for Food Stamps during the Quality Control review period until it cooperates with the SQC or FQC review. (3-30-07)

03. Food Stamps After Review Period, Refusal to Cooperate With SQC. The household is not eligible for Food Stamps ~~until one hundred thirteen (113) days after the end of the annual review period~~ for the period of time set forth in 7 CFR 273.02. After this time: (3-30-07)()

a. The household must reapply. (6-1-94)

b. The household must supply proof of all current eligibility information before certification. (6-1-94)

04. Food Stamps After Review Period, Refusal to Cooperate with FQC. The household is not eligible for Food Stamps ~~until seven (7) months after the end of the annual~~

~~review period~~ for the period of time set forth in 7 CFR 273.02. After this time: ~~(3-30-07)~~()

- a.** The household must reapply. (6-1-94)
- b.** The household must supply proof of all current eligibility information before certification. (6-1-94)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED (AABD)

DOCKET NO. 16-0305-1003

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATES: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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, Idaho Code, notice is hereby given this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, 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 Department of Health and Welfare's Self-Reliance Program has adopted rules to allow electronic and telephonic signatures to improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the December 1, 2010, Idaho Administrative Bulletin, Vol. 10-12, pages 57 and 58.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact for this rule change will be minimal to state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alberto Gonzalez at (208) 334-5969.

DATED this 7th day of April, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

EFFECTIVE DATES: The effective date of this temporary rule is **January 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 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 December 15, 2010.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In recent years, the Department of Health and Welfare's Self-Reliance Program has implemented many technological and process improvements including a new case management system, consolidated service centers, and electronic case records. These improvements have allowed the Department to meet the ever increasing need for services while maintaining quality. In order to further maximize on these improvements, electronic and telephonic signatures will further streamline practices, improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services.

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

The Department closed ten field offices in 2010, reducing the number of locations that customers can access our services. Allowing for electronic and telephonic signatures improves access for our rural state where offices are not always close by and helps to support communities where offices were closed.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The fiscal impact for this rule change will be minimal to state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes confer a benefit.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Alberto Gonzales at (208) 334-5969.

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 December 22, 2010.

DATED this 5th day of November, 2010.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1003

009. -- ~~0498~~. (RESERVED).

049. SIGNATURES.

An individual who is applying for benefits, receiving benefits, or providing additional information as required by this chapter, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)**

DOCKET NO. 16-0305-1102

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 Sections 56-202, 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 Department is aligning the Eligibility for Aid to the Aged, Blind, and Disabled (AABD) rules with other Department eligibility assistance program rules regarding business processes. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011, Idaho Administrative Bulletin, Vol. 11-10, pages 365 and 366.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Callie King at (208) 334-0663.

DATED this 18th day of November, 2011.

Tamara Prisock
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THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 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 October 19, 2011.

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 Department is aligning the Eligibility for Aid to the Aged, Blind, and Disabled (AABD) rules with other Department eligibility assistance program rules regarding business processes. These changes streamline and improve the outcomes for individuals in need of assistance by adding a self-employment standard deduction for allowable expenses and excluding veterans' educational payments.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes are being made to improve outcomes for individuals in need of assistance and improve efficiencies in the Department's business processes.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Callie King at (208) 334-0663.

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 October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1102

402. SELF-EMPLOYMENT ALLOWABLE EXPENSES.

Allowable ~~Operating~~ expenses subtracted from self-employment income are listed in Subsections 402.01 through 402.167 of this rule. ~~(7-1-99)~~()

01. Self-Employment Standard Deduction. The Department uses a standard self-employment deduction, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the allowable expenses described in Subsection 402.02 through 402.17 of this rule. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as calculated in Section 401 of these rules. ()

- ~~012.~~ **Labor.** Labor paid to individuals not in the family. (7-1-99)
- ~~023.~~ **Materials.** Materials such as stock, seed and fertilizer. (7-1-99)
- ~~034.~~ **Rent.** Rent on business property. (7-1-99)
- ~~045.~~ **Interest.** Interest paid to purchase income producing property. (7-1-99)
- ~~056.~~ **Insurance.** Insurance paid for business property. (7-1-99)
- ~~067.~~ **Taxes.** Taxes on income producing property. (7-1-99)
- ~~078.~~ **Business Transportation.** Business transportation as defined by the IRS. (7-1-99)
- ~~089.~~ **Maintenance.** Landscape and grounds maintenance. (7-1-99)
- ~~0910.~~ **Lodging.** Lodging for business related travel. (7-1-99)
- ~~101.~~ **Meals.** Meals for business related travel. (7-1-99)
- ~~112.~~ **Use of Home.** Costs of partial use of home for business. (7-1-99)
- ~~123.~~ **Legal.** Business related legal fees. (7-1-99)
- ~~134.~~ **Shipping.** Business related shipping costs. (7-1-99)
- ~~145.~~ **Uniforms.** Business related uniforms. (7-1-99)

- 156.** **Utilities.** Utilities for business property. (7-1-99)
- 167.** **Advertising.** Business related advertising. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

422. VA EDUCATIONAL BENEFITS.

VA educational payments funded by the government, ~~but not part of vocational rehabilitation,~~ are ~~unearned income~~ excluded. (7-1-99)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING THE TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO PROGRAM (TAFI)

DOCKET NO. 16-0308-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATES: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, 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 Department of Health and Welfare's Self-Reliance Program has adopted rules to allow electronic and telephonic signatures to improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [December 1, 2010, Idaho Administrative Bulletin, Vol. 10-12, pages 59 and 60.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact for this rule change will be minimal to state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Rosie Andueza at (208) 334-5553.

DATED this 7th day of April, 2011.

Tamara Prisock
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THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

EFFECTIVE DATES: The effective date of this temporary rule is **January 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 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 December 15, 2010.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In recent years, the Department of Health and Welfare's Self-Reliance Program has implemented many technological and process improvements including a new case management system, consolidated service centers, and electronic case records. These improvements have allowed the Department to meet the ever increasing need for services while maintaining quality. In order to further maximize on these improvements, electronic and telephonic signatures will further streamline practices, improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services.

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

The Department closed ten field offices in 2010, reducing the number of locations that customers can access our services. Allowing for electronic and telephonic signatures improves access for our rural state where offices are not always close by and helps to support communities where offices were closed.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The fiscal impact for this rule change will be minimal to state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes confer a benefit.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

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 December 22, 2010.

DATED this 5th day of November, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-1002

103. -- ~~1065~~. (RESERVED).

106. SIGNATURES.

An individual who is applying for benefits, receiving benefits, or providing additional information as required by this chapter, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING THE TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI) PROGRAM

DOCKET NO. 16-0308-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2012, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. The effective date for this chapter of rules is July 1, 2012.

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 56-202, Idaho Code, and 45 CFR Parts 260 through 265.

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

These rule changes clarify application timelines, individuals included in a TAFI household for income and resource eligibility, provide for collection of overpayments, and allow for electronic notification to clients. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011, Idaho Administrative Bulletin, Vol. 11-10, pages 367 through 374.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact due to these rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Rosie Andueza at (208) 334-5553.

DATED this 22nd day of November, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
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(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code, and 45 CFR Parts 260 through 265.

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 October 19, 2011.

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 changes are being made to standardize household composition, income, resources and application time frames. Further, rule changes are needed to allow the Department to collect in all situations involving TAFI overpayments. Rule changes are also needed to provide clarification on how actions impact TAFI time limits for eligible recipients.

Specifically, the following changes are being made:

- 1. Change TAFI rules to more clearly define application timelines and those individuals living in the applicants household who are required to be included on the TAFI case.**
- 2. Update rules regarding treatment of income and resources to align them with other Self-Reliance programs.**
- 3. Add rule to allow for collection of overpayments in all situations. Current TAFI rules only allow for collection of overpayments in the event of an intentional program violation.**
- 4. Make changes to various Sections to add clarity and to allow for client notices to be sent electronically.**

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done simply to clarify and update the TAFI rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

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 October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-1101

010. DEFINITIONS.

01. Agency Error. A benefit error caused by the Department's action or failure to act. ()

02. Applicant. An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)

03. Assistance. Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)

04. Caretaker Relative. An adult specified relative other than parents who have an eligible related child residing with them and who are responsible for the child's care. (5-8-09)

05. Claim Determination. The action taken by the Department establishing the household's liability for repayment when a TAFI overpayment occurs. ()

06. Department. The Idaho Department of Health and Welfare. (7-1-98)

07. Dependent Child. A child under the age of eighteen (18), or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training. (3-30-01)

068. Earned Income. Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)

079. Family. A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)

~~**08. Family Unit.** A unit of eligible individuals that includes parents or may include caretaker relatives, who have an eligible related child residing with them. (5-8-09)~~

~~**0910. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)~~

11. Household. A unit of eligible individuals that includes parents and step-parents, or may include caretaker relatives who have an eligible child residing with them. ()

12. Inadvertent Household Error (IHE). A benefit error caused unintentionally by the household. ()

103. Noncustodial Parent. A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)

14. Parent. The mother or father of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (7-1-98)

125. Participant. An individual who has signed a Personal Responsibility Contract. (7-1-98)

136. Personal Responsibility Contract (PRC). An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)

147. Temporary Assistance for Families in Idaho (TAFI). Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)

158. Temporary Assistance for Needy Families (TANF). The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)

169. Unearned Income. Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

20. Step-Parent. An individual in the TAFI household who is married to the parent of an eligible child when there are no children in common. ()

(BREAK IN CONTINUITY OF SECTIONS)

108. APPLICATION FOR ASSISTANCE.

The application form must be signed by an adult participant, a legal guardian or a representative, and must be received by the Department. A new TAFI application is required if the application was denied for failure to provide required verification and more than thirty (30) days have elapsed since the household applied. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

116. PERSONAL RESPONSIBILITY CONTRACT (PRC).

A personal responsibility contract must be negotiated and signed by the family mandatory adults household members defined under Section 125 of these rules, and all application activities must be completed before eligibility can be approved. The family must continue to comply with ongoing personal responsibility contract requirements to remain eligible. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

125. ~~BUDGETING FOR PARENTAL CARETAKERS~~ MANDATORY TAFI HOUSEHOLD MEMBERS.

Individuals who must be included in the family are listed in Subsections 125.01 through 125.034 of this rule. (5-8-09)()

01. Children. Children under the age of eighteen (18) or, under the age of nineteen (19) if they are attending a secondary school or the equivalent level of vocational or technical training full time. Children must reside with a parent who exercises care and control of them. A dependent child's natural or adoptive brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. (5-8-09)

02. Parents. Parents who have an eligible natural or adopted child residing with them. (7-1-98)

03. Pregnant Woman. A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)

04. Step-Parents. Individuals who are married to the parent of a dependant child.

()

05. Spouses. Anyone related by marriage to another mandatory household member.

()

(BREAK IN CONTINUITY OF SECTIONS)

163. WORK ACTIVITIES RESPONSIBILITY.

All adults mandatory household members are required to participate in work activities, up to forty (40) hours per week. A child between the ages of sixteen (16) and eighteen (18), who is not attending school, must participate up to forty (40) hours per week in assigned work activities. A single custodial parent of a child less than six (6) years of age is not required to participate in a work activity if one of the reasons listed in Subsections 163.01 through 163.03 occurs.

~~(3-15-02)~~()

01. Reasonable Distance. Appropriate child care is not available within a reasonable distance from the participant's home or work site. (7-1-98)

02. Relative Child Care. Informal child care by relatives or others is not available or is unsuitable. (7-1-98)

03. Child Care Not Available. Appropriate and affordable child care is not available. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

200. RESOURCE LIMIT.

The total of the entire family's countable resources must not be greater than ~~two~~ five thousand dollars (\$~~25~~,000) in any month. Resources are money, financial instruments, vehicles, and real property. ~~(7-1-98)~~()

(BREAK IN CONTINUITY OF SECTIONS)

215. EXCLUDED INCOME.

The types of income listed in Subsections 215.01 through 215.38 of this rule, are excluded. (4-7-11)

01. Supportive Services. Supportive services payments. (7-1-98)

02. Work Reimbursements. Work-related reimbursements. (7-1-98)

- 03. Child's Earned Income.** Earned income of a dependent child, who is attending school. (7-1-98)
- 04. Child Support.** Child support payments assigned to the State and non-recurring child support payments received in excess of that amount. (7-1-98)
- 05. Loans.** Loans with a signed, written repayment agreement. (7-1-98)
- 06. Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)
- 07. Money Gifts.** Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)
- 08. TAFI.** Retroactive TAFI grant corrections. (7-1-98)
- 09. Social Security Overpayment.** The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)
- 10. Interest Income.** Interest posted to a bank account. (7-1-98)
- 11. Tax Refunds.** State and federal income tax refunds. (7-1-98)
- 12. EITC Payments.** EITC payments. (7-1-98)
- 13. Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
- 14. Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
- 15. Foster Care.** Foster care payments. (7-1-98)
- 16. Adoption Assistance.** Adoption assistance payments. (7-1-98)
- 17. Food Programs.** Commodities and food stamps. (7-1-98)
- 18. Child Nutrition.** Child nutrition benefits. (7-1-98)
- 19. Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
- 20. Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
- 21. Home Energy Assistance.** Home energy assistance payments under Public Law

- 100-203, Section 9101. (7-1-98)
- 22. Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
- 23. Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
- 24. Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
- 25. Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
- 26. Educational Income.** Educational income, ~~except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income~~ includes deferred repayment education loans, grants, scholarships, fellowships, and veterans' educational benefits. The school attended must be a recognized institution of post secondary education, a school for the handicapped, a vocational education program, or a program providing completion of a secondary school diploma, or equivalent. (7-1-98)()
- 27. Work Study Income of Student.** College work study income. (7-1-98)
- 28. VA Educational Assistance.** VA Educational Assistance. (7-1-98)
- 29. Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
- 30. Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
- 31. Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
- 32. Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
- 33. Agent Orange.** Agent Orange settlement payments. (7-1-98)
- 34. Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)
- 35. Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)

36. **Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)

37. **Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)

38. **Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. (4-7-11)

39. **Income Excluded By Federal Law.** Income excluded by federal law is not counted in determining income available to the participant. ()

(BREAK IN CONTINUITY OF SECTIONS)

300. DEPARTMENT NOTIFICATION RESPONSIBILITY.

Notification must be provided to a family whenever eligibility or the grant amount changes. The notification must state the effective date and the reason for the action, the rule that supports the action, and the family's appeal rights. Notification may be delivered to the customer by hand, U.S. Mail, professional delivery service, or by any electronic means. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

302. ADVANCE NOTIFICATION NOT REQUIRED.

Notification must be provided by the date of the action, but advance notification is not required when a condition listed in Subsections 302.01 through 302.07 exists. (3-30-07)

01. **Family Request.** The family requests closure of the grant *in writing*. (7-1-98)()

02. **Family Member in Institution.** A family member is admitted or committed to an institution. (7-1-98)

03. **Family's Address Unknown.** The family's whereabouts are unknown and Department mail is returned showing no known forwarding address. (7-1-98)

04. **TANF Received in Another State.** A family member is receiving TANF in another state. (7-1-98)

05. Child Removed. A child family member is removed from the home due to a judicial determination. (7-1-98)

06. Intentional Program Violation (IPV). An IPV disqualification begins the first month after the month the member receives written notice of disqualification. (7-1-98)

07. Failure to Comply with Personal Responsibility Contract. A participant fails to comply with activities agreed to in the participant's Personal Responsibility Contract. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

318. CONTINUATION PENDING LOCAL HEARING DECISION.

The family may continue to receive assistance during the hearing process if the Department receives the request for continued benefits within ten (10) days from the date the notification was mailed. Assistance will be continued at the current month's level while the hearing decision is pending, unless the twenty-four (24) month limit is reached or another change affecting the family's eligibility occurs, including failure to cooperate with requirements of the Personal Responsibility Contract while waiting for the Fair Hearing decision. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

332. NOTICE OF OVERPAYMENT.

The Department must notify the participant when an *HPV* overpayment exists. The notice must inform the participant of mandatory recovery, the right to a hearing, the method for repayment and the need to arrange a repayment interview. (7-1-99)()

333. INADVERTENT HOUSEHOLD ERROR AND AGENCY ERROR TAFI OVERPAYMENTS.

An overpayment exists when a household receives a TAFI payment that exceeds the amount they were eligible to receive. The Department must establish a claim against the household, to recover the value of the overpaid TAFI benefit. ()

01. Inadvertent Household Error (IHE). An IHE is an error caused by an adult household member, without intent to cause an overpayment, which results in an overpayment. Examples of IHE claims are: ()

a. Failure to Give Information. A household, without intent to cause an overpayment, fails to give correct or complete information. ()

b. Failure to Report a Change that was required to be reported. A household, without intent to cause an overpayment, fails to report changes or to report at all. ()

c. Failure to Comply. A household, without intent to cause an overpayment, fails to comply due to a language barrier, educational level, or not understanding written or verbal instructions. ()

d. Benefits Paid Pending a Hearing. A household gets continued TAFI pending a fair hearing decision and the hearing decision, when made, is against the household. ()

02. Agency Error (AE). An agency error overpayment claim results from an overpayment caused by a Department action, or failure to act. ()

~~333.~~—334. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.14 - RULES GOVERNING LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

DOCKET NO. 16-0414-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 56-202, Idaho Code, and 42 U.S.C. Sections 8621 to 8629, Low Income Home Energy Assistance Act of 1981.

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 Department is aligning the Low Income Home Energy Assistance Program (LIHEAP) rules with other Department eligibility assistance program rules. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011, Idaho Administrative Bulletin, Vol.11-10, pages 398 through 404.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact to the state general fund related to this rulemaking. This program is 100% federally funded by a fixed block grant award.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Garland Draper (208) 334-5686.

DATED this 21st day of November, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code, and 42 U.S.C. Sections 8621 to 8629, Low Income Home Energy Assistance Act of 1981.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Tuesday, October 25, 2011, 3:00 p.m.

**DHW Central Office
450 West State Street
Conference Room 2A
Boise, ID**

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

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

The Department is aligning the Low Income Home Energy Assistance Program (LIHEAP) rules with other Department eligibility assistance program rules to streamline and improve the outcomes for individuals in need of assistance. The proposed income eligibility will be aligned with the Food Stamp and Supplemental Security Income eligibility requirements that are 150% of the Federal Poverty Guidelines (FPG).

Definitions will be added for the FPG and vendor. Also, enforcement remedies will be added including actions that can be taken by the Department in the event of a participant or vendor knowingly falsifies documentation or information to receive LIHEAP payments and services.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact to the state general fund related to this rulemaking. This program is 100% federally funded by a fixed block grant award.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules are being aligned with other Department rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Garland Draper (208) 334-5686.

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 October 26, 2011.

DATED this 31st day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0414-1101

010. DEFINITIONS.

Definitions applicable to this chapter of rules. (3-30-07)

01. Community Action Agency. A private non-profit organization serving the low income population in specified counties of the state with which the Department has entered into a contract for the provision of services for purposes of LIHEAP. (3-30-07)

02. Crisis Assistance. Energy assistance provided to an eligible participant household to reduce or eliminate an energy related health threatening situation to the household. (3-30-07)

03. Department. The Department of Health and Welfare or its designee. (3-30-07)

04. Federal Poverty Guidelines (FPG). The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services website at: <http://aspe.hhs.gov/poverty/>. ()

045. Fraud. Recipient fraud is indicated where there appears to be a deliberate attempt to conceal or misrepresent pertinent information which could affect eligibility or grant amounts. (7-1-99)

056. Head of Participant Household. The person designated by the household members to receive energy assistance benefit in behalf of the household and in whose favor the energy assistance warrant is written. (7-1-99)

067. Income. Income is the gross amount of moneys actually received in the participant household from all sources. (4-5-00)

078. Intake Manual. Manual used by community action agencies for procedural policy and benefit calculation factors, which is published annually by the Department. (3-30-07)

089. Participant. An individual or group of individuals who has made application for the Low Income Home Energy Assistance Program from the state of Idaho. (3-30-07)

0910. Participant Household. A participant household is one (1) of the following: (3-30-07)

a. An individual who lives alone; or (3-30-07)

b. A group of individuals who are living together as one (1) economic unit where residential energy is customarily purchased in common or they make undesignated payments for energy in the form of rent. (3-30-07)

101. Primary Fuel. The type of fuel declared by the participant household to be the major source of their home heating. (7-1-99)

112. Undocumented Resident. Individuals who enter the United States illegally and who have not obtained legal resident status. (3-30-07)

13. Vendor. A utility company or other provider of fuel utilized for home heating. ()

(BREAK IN CONTINUITY OF SECTIONS)

151. INCOME ELIGIBILITY REQUIREMENTS.

Under 42 U.S.C. 8624(b)(2)(B)(ii), assistance under this program is limited to participant households with countable income at or below ~~sixty percent (60%) of Idaho's "State Median Income Estimate." State median income is defined in 42 USC 8622(11). The federal "State Median Income Estimate" for Idaho. (http://www.acf.hhs.gov/programs/oes/liheap/guidance/information_memoranda/im09-05.html)~~ one hundred fifty percent (150%) of the Federal Poverty Guideline. Participant households must provide proof of income for all members during the application process. (~~3-29-10~~)()

01. Households Receiving SSI or Food Stamps. Households in which one (1) or more individuals are receiving one (1) of the following are eligible for LIHEAP: ()

a. Supplemental Security Income (SSI) under Title XVI of the Social Security Act; or ()

b. Food Stamps under the Food Stamp Act of 1977, under 7 USC 2011 through 2027.

()

0~~1~~2. **Income Not Counted.** Income listed in Subsections 151.0~~1~~2.a. through 151.0~~1~~2.vi. is not counted in determining LIHEAP eligibility or benefit level. All other income is counted in determining LIHEAP eligibility and benefit level. (3-15-02)()

- a. Benefit payments from Medicare Insurance. (4-5-00)
- b. Private loans made to the participant or the household. (4-5-00)
- c. Assets withdrawn from a personal bank account. (4-5-00)
- d. Sale of real property, if the funds are reinvested within three (3) calendar months. (3-15-02)
- e. Income tax refunds. (4-5-00)
- f. Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than thirty dollars (\$30) during the three (3) month period before application for LIHEAP. (4-5-00)
- g. Wages or allowances for attendant care when the attendant resides in the household of the disabled member. (4-5-00)
- h. Interest income of thirty dollars (\$30) or less received during the three (3) month period before application for LIHEAP. (4-5-00)
- i. Legal fees or settlements from Workman's Compensation paid in a lump sum. (4-5-00)
- j. Monies received for educational purposes from NSDL, College work-study programs, State Student Incentive grants, SEOG, Pell, Guaranteed Student Loans and Supplemental grants funded under Title IV, A-2. (3-15-02)
- k. Monies from VA-GI Bill for Education. (4-5-00)
- l. Department of Health and Welfare Adoption subsidies. (4-5-00)
- m. Compensation provided volunteers in the Older American Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, Title V Senior Employment Program. (4-5-00)
- n. Third party payments made by a non-household member on behalf of the household. Third party payments include child care, energy assistance funds, shelter, food and clothing assistance. (4-5-00)
- o. Value of food stamps or donated food to household. (4-5-00)

- p. Utility allowance. (4-5-00)
- q. TAFI lump sum payments. (3-15-02)
- r. Tribal crop or land payments. (3-15-02)
- s. AmeriCorps stipend. (3-15-02)
- t. Child support income. (3-29-10)

023. Income Received Monthly. To determine LIHEAP eligibility and benefit amount, when participant household income is received at least monthly, use the three (3) month's income prior to the date of application. (4-5-00)

034. Income Received Less Often Than Monthly. For household income received less often than monthly convert the income into a three (3) month amount: (4-5-00)

- a. Multiply income received weekly by twelve and nine tenths (12.9). (4-5-00)
- b. Multiply income received every two (2) weeks by six and forty-five hundredths (6.45). (4-5-00)
- c. Multiply income received twice each month by six (6). (4-5-00)

045. Seasonal and Self-Employment Income. For households with seasonal or self-employment income divide the annual income by four (4). (4-5-00)

056. Treatment of Undocumented Resident Income. If a household includes eligible and ineligible undocumented resident participants, and one (1) or more of the ineligible participants had income during the reporting period, count the ineligible participants' income and exclude the undocumented resident from the household count. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

302. OVERPAYMENTS.

~~All overp~~ Payments issued on behalf of a participant household that is not eligible ~~to receive~~ must be repaid to the Department. (7-1-99)()

303. RECOUPMENT OF OVERPAYMENT.

01. Recoupment of Overpayment. The Department may recoup or recover the amount issued on behalf of a LIHEAP participant. Interest will accrue on overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Recoupment of an overpayment based on Department error may be collected from a vendor or participant when the overpayment is one hundred dollars (\$100), or

more. Interest will not accrue on overpayments made due to Department error. An overpayment due to vendor or participant error, intentional program violations (IPV), or fraud must be recovered in full. ()

02. Repayment Requirement. A vendor or participant must repay any overpayment, but may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in revocation of that agreement and may result in the revocation of the vendor agreement. ()

304. -- 309. (RESERVED)

310. INTENTIONAL PROGRAM VIOLATIONS (IPV).

An IPV is an intentionally false or misleading action or statement as identified below in Subsections 310.01 through 310.07 of this rule. An IPV is established when a vendor or participant admits the IPV in writing and waives the right to an administrative hearing, or when determined by an administrative hearing, a court decision, or through deferred adjudication. Deferred adjudication exists when the court defers a determination of guilt because the accused vendor or participant meets the terms of a court order or an agreement with the prosecutor. ()

01. False Statement. An individual or vendor makes a false statement to the Department, either orally or in writing, in order to participate in LIHEAP. ()

02. Misleading Statement. An individual or vendor makes a misleading statement to the Department, either orally or in writing, to participate in LIHEAP. ()

03. Misrepresentation of Fact. An individual or vendor misrepresents one (1) or more facts to the Department, either orally or in writing, to participate in LIHEAP. ()

04. Concealing Fact. An individual or vendor conceals or withholds one (1) or more facts to participate in LIHEAP. ()

05. Non-Compliance With Rules and Regulations. An individual or vendor fails repeatedly or substantially to comply with this chapter of rules. ()

06. Violation of Vendor Agreement. A vendor or any agent thereof who knowingly violates any term of the vendor agreement. ()

07. Failure to Repay. An individual or vendor has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or vendor agreement. ()

311. PENALTIES FOR AN IPV.

When the Department determines an IPV was committed, the participant or vendor who committed the IPV loses eligibility to participate in LIHEAP. If an individual in a LIHEAP household has committed an IPV, the entire household is ineligible for LIHEAP. If a vendor has committed an IPV, the vendor is ineligible to receive payments. The period of ineligibility for each offense, for both a participant or a vendor, is as follows: ()

01. First Offense. Twelve (12) months, for the first IPV or fraud offense, or the length of time specified by the court. ()

02. Second Offense. Twenty-four (24) months for the second IPV or fraud offense, or the length of time specified by the court. ()

03. Third Offense. Permanent ineligibility for the third or subsequent IPV or fraud offense, or the length of time specified by the court. ()

312. -- 319. (RESERVED)

320. DENIAL OF PAYMENT.

The Department may deny payment to the vendor or participant for the reasons described in Subsections 320.01 through 320.04 of this rule. ()

01. Services Not Provided. Any or all claims for vendor services the Department determines were not provided. ()

02. Contrary to Rules or Provider Agreement. Vendor services provided contrary to these rules or the vendor agreement. ()

03. Failure to Provide Immediate Access to Records. The vendor does not allow immediate access by the Department to LIHEAP records. ()

04. Willful Misrepresentation or Concealment of Facts. The vendor or participant willfully misrepresents or conceals facts relating to LIHEAP. ()

321. -- 349. (RESERVED)

350. TERMINATION OF VENDOR STATUS.

Under Section 56-209h, Idaho Code, the Department may terminate the vendor agreement of, or otherwise deny vendor status for a period up to five (5) years from the date the Department's action becomes final to any individual or entity providing LIHEAP. ()

01. Submits an Incorrect Claim. Submits a claim with knowledge that the claim is incorrect. ()

02. Fraudulent Claim. Submits a fraudulent claim. ()

03. Knowingly Makes a False Statement. Knowingly makes a false statement or representation of material facts in any document required to be maintained or submitted to the Department. ()

04. Immediate Access to Documentation. Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. ()

05. Non-Compliance With Rules and Regulations. Fails repeatedly or substantially

to comply with the rules and regulations governing LIHEAP payments. ()

06. Violation of Material Term or Condition. Knowingly violates any material term or condition of the vendor agreement. ()

07. Failure to Repay. Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or vendor agreement. ()

08. Fraudulent or Abusive Conduct. Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of LIHEAP funded services. ()

351. REFUSAL TO ENTER INTO AN AGREEMENT.
The Department may refuse to enter into a vendor agreement for the reasons described in Subsections 351.01 through 351.05 of this rule. ()

01. Convicted of a Felony. The vendor has been convicted of a felony relating to their involvement in a public assistance program. ()

02. Failed to Repay. The vendor has failed to repay the Department monies which had been previously determined to have been owed to the Department. ()

03. Investigation Pending. The vendor has a pending investigation for program fraud or abuse. ()

04. Terminated Vendor Agreement. The vendor was the managing employee, officer, or owner of an entity whose vendor agreement was terminated under Section 350 of these rules. ()

05. Excluded Individuals. The vendor has a current exclusion from participation in federal programs by the Office of Inspector General List of Excluded Individuals and Entities. ()

352. VENDOR OR PARTICIPANT NOTIFICATION.
When the Department determines any actions defined in Sections 303 through 351 of these rules are appropriate, it will send written notice of the decision to the vendor or participant. The notice will state the basis for the action, the length of the action, the effect of the action on the participant or the vendor's ability to provide services under state and federal programs, and appeal rights. ()

~~3053.~~ -- 994. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.05.04 - RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE
AND VICTIM ASSISTANCE GRANT FUNDING

DOCKET NO. 16-0504-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 39- 5209, 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.

In accordance with input from stakeholders and legislative intent, Section I.B.4. of the document entitled: “Minimum Standards for the Domestic Violence Offender Intervention Programs,” is being revised so as to prohibit conjoint treatment (couples counseling) as an alternative intervention. This revision reflects changes to language in the standards document negotiated with stakeholders during the 2011 legislative session. To review the standards document showing the negotiated revisions, go to <http://www.icdv.idaho.gov>.

In the Incorporations by Reference section of the chapter, a new volume number is being added to the citation for the revised standards document.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [July 6, 2011, Idaho Administrative Bulletin, Vol. 11-7, pages 117 and 118.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Luann Dettman at (208) 332-1540.

DATED this 18th day of November, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

***THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2011**.

AUTHORITY: In compliance with Section 67-5221(1), and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 39- 5209, 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 July 20, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with input from stakeholders and legislative intent, Section I.B.4. of the document entitled: “Minimum Standards for the Domestic Violence Offender Intervention Programs,” is being revised so as to prohibit conjoint treatment (couples counseling) as an alternative intervention. This revision reflects changes to language in the standards document negotiated with stakeholders during the 2011 legislative session. To review the standards document showing the negotiated revisions, go to <http://www.icdv.idaho.gov>.

In the Incorporations by Reference section of the chapter, a new volume number is being added to the citation for the revised standards document.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of this rule is appropriate as it 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: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted during the 2011 legislative session with interested stakeholders. No “Notice of Intent to Promulgate Rules - Negotiated Rulemaking” was published in the Idaho Administrative Bulletin.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the revised **Minimum Standards for Domestic Violence Offender Intervention Programs document, edition 2011-1**, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, and because of the cost for republication. The document will be available at <http://www.icdv.idaho.gov> on its effective date, July 1, 2011.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Luann Dettman at (208) 332-1540.

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 July 27, 2011.

DATED this 3rd day of June, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0504-1101

004. INCORPORATION BY REFERENCE.

01. General. Unless provided otherwise, any reference in these rules to any document identified in Section 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “document” includes codes, standards, or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

02. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available: (5-3-03)

a. At the Idaho Council on Domestic Violence and Victim Assistance, 304 North 8th

Street, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0036. (3-30-11)

b. On the internet at: <http://www.icdv.idaho.gov>. (5-3-03)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. “Domestic Violence Program and Personnel Standards,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective November 20, 1998. (5-3-03)

b. “Minimum Standards for Domestic Violence Offender Intervention Programs,” published by the Idaho Council on Domestic Violence and Victim Assistance, edition 2011-1, effective July 1, 2011. ~~(3-30-11)~~()

c. “Sexual Assault Program and Personnel Standards,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective April 27, 2001. (5-3-03)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 Sections 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code; and 25 U.S.C. Sections 1901-1963 (Indian Child Welfare Act).

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 rule change is needed to streamline the “Notice of Pending Proceedings” to any and all tribes regarding children who may be subject to the federal Indian Child Welfare Act (ICWA). This rule change removes errors, inconsistencies, and redundancies from the current chapter of rules in Sections regarding compliance with ICWA.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 7, 2011, Idaho Administrative Bulletin, Vol. 11-9, pages 70 through 84.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Relative to the state general fund, this rulemaking is budget neutral.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5706.

DATED this 17th day of November, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code; and 25 U.S.C. Sections 1901-1963 (Indian Child Welfare Act).

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 21, 2011.

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

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

This rule change is needed to streamline the “Notice of Pending Proceedings” to any and all tribes regarding children who may be subject to the federal Indian Child Welfare Act (ICWA). This rule change removes errors, inconsistencies, and redundancies from the current chapter of rules in Sections regarding compliance with ICWA.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Relative to the state general fund, this rulemaking is budget neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rule changes are being made simply to clarify and streamline rules related to the Indian Child Welfare Act (ICWA).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

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 28, 2011.

DATED this 9th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-1101

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.

For the purposes of these rules, the following terms are used: (5-8-09)

01. Family. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

02. Family Assessment. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

03. Family Case Record. Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

04. Family (Case) Plan. Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

05. Family Services Worker. Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

06. Federally-Funded Guardianship Assistance for Relatives. Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. (4-7-11)

07. Field Office. A Department of Health and Welfare service delivery site. (3-18-99)

08. Goal. A statement of the long term outcome or plan for the child and family. (3-18-99)

09. Independent Living. Services provided to eligible foster or former foster youth,

ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)

10. Indian. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

11. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe; or ~~(3-18-99)~~()

b. Eligible for membership in an Indian tribe, and who is the biological child of a member of an Indian tribe. ~~(3-18-99)~~()

12. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

13. Indian Child's Tribe. (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

14. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

15. Intercountry Adoption Act of 2000 (P.L. 106-279). Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

16. Interethnic Adoption Provisions of 1996 (IEP). IEP prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (4-7-11)

17. Interstate Compact on the Placement of Children (ICPC). Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

18. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.

For the purposes of these rules, the following terms are used: (5-8-09)

01. Legal Guardianship. A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative. (4-7-11)

02. Licensed. Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-30-07)

03. Licensing. See IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 100. (3-30-07)

04. Medicaid. See "Title XIX." (3-30-01)

05. Multiethnic Placement Act of 1994 (MEPA). MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-18-99)

06. Parent. A person who, by birth or through adoption, is considered legally responsible for a child. The term "legal guardian" is not included in the definition of parent. (5-8-09)

07. Permanency Planning. A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

08. Personal Care Services (PCS). Services to eligible Medicaid recipients that involve personal and medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

09. P.L. 96-272. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (3-30-01)

10. P.L. 105-89. Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

11. Planning. An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

12. Qualified Expert Witness--ICWA. ~~A person who is most likely to be a qualified expert witness in the placement of an Indian child is:~~ An individual who is an expert regarding tribal customs pertaining to family organization and child rearing practice, and is qualified to

render an opinion as to whether continued custody of the child by the parent(s), or Indian custodian(s), is likely to result in serious emotional or physical damage to the child.

~~(3-18-99)()~~

~~**a.** A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child-rearing practices;~~

~~(3-18-99)~~

~~**b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe;~~

~~(3-18-99)~~

~~**c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community; or~~

~~(3-18-99)~~

~~**d.** An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs.~~

~~(3-18-99)~~

13. Relative. Person related to a child by blood, marriage, or adoption. (3-30-01)

14. Relative Guardian. A relative who is appointed a child's legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. (4-7-11)

15. Reservation. ~~Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. A reservation is an area of land "reserved" by or for an Indian band, village, or tribe(s) to live on and use. Reservations were created by treaty, by congressional legislation, or by executive order. Since 1934, the Secretary of the Interior has had the responsibility of establishing new reservations or adding land to existing reservations.~~ (3-18-99)()

16. Respite Care. Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a licensed or agency-approved caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)

17. Responsible Party. A Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

030. CORE CHILD AND FAMILY SERVICES.

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

01. Crisis Services. Crisis Services are an immediate response to ensure safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess safety and place in alternate care, if necessary, to ensure safety for the child. (4-7-11)

02. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

03. Assessment and Safety/Service Planning Services. Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (4-7-11)

04. Preventative Services. Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

05. Court-Ordered Services. These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

06. Alternate Care (Placement) Services. Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed, ~~or~~ approved ~~or specified~~ by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. ~~(5-8-09)~~()

07. Community Support Services. Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

08. Interstate Compact on Out-of-State Placements. Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the “Interstate Compact on the Placement of Children.” Placements must be in compliance with all state and federal laws. (5-8-09)

09. Independent Living. Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

a. Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be fifteen (15) to nineteen (19) years of age; (5-8-09)

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth’s family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

b. Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth’s family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fifteen (15) years of age; or (5-8-09)

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

c. Eligibility Limit. Once established, a youth’s eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

10. Adoption Services. Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

11. Administrative Services. Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

- a. Child care licensing; (3-30-01)
- b. Daycare licensing; (3-30-01)
- c. Community development; and (5-8-09)
- d. Contract development and monitoring. (5-8-09)

031. -- 049. (RESERVED)

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to ensure timely permanency for children and to protect the rights of children, their families and their tribes. (4-7-11)

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with his family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (4-7-11)

- a. Efforts to prevent or eliminate the need for a child to be removed from his home; (5-8-09)
- b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)
- c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

02. Active Efforts. ~~For an Indian child, a description of the active~~ **The** efforts ~~made required under ICWA~~ to provide remedial services and rehabilitative programs designed to prevent the breakup of ~~the an~~ Indian family; ~~that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child, or to reunify an Indian family.~~ **Active efforts must include contacts and work with an Indian child's tribe.** (5-3-03)()

03. ICWA Placement Preferences. ~~If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences.~~ (3-18-99)()

a. When the Indian child's permanency goal is reunification, the preferences are described in Section 402 of these rules. ()

b. When the Indian child's permanency goal is adoption or guardianship, the preferences are described in Subsection 800.01 of these rules. ()

c. When the placement preferences are not followed, the court must determine that good cause exists for not following the preferences. ()

04. Least Restrictive Setting. Efforts will be made to ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. ~~For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child.~~ (4-7-11)()

05. Legal Requirements for Indian Children. ~~In the case of~~ When there is reason to believe that a child is an Indian child, notice of the pending proceeding must be sent ~~by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, according to the notice provisions specified in Section 051 of these rules. Notice must also include~~ notice of their tribe's right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; and the right to examine all documents filed with the court upon which placement may be based; ~~and the right to withdraw consent to a voluntary foster placement.~~ (3-30-07)()

06. Visitation for Child's Parent(s) or Legal Guardian(s). Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (3-30-07)

07. Notification of Change in Placement. Written notification ~~to the child's parent(s) or legal guardian(s)~~ must be made within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, ~~or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA.~~ Notification must be sent to the child's parent(s) or legal guardian(s). When the child is an Indian child, written notification must also be sent to the child's Indian custodian(s), if applicable, and to the child's tribe. (5-3-03)()

08. Notification of Change in Visitation. Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

09. Notification of Right to Participate and Appeal. Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-30-07)

10. Qualified Expert Witness--ICWA-Placement Preferences. ~~Compliance with the foster care placement preferences of the Indian Child Welfare Act.~~ The testimony of an expert witness is required at the hearing in which a child is placed in state custody, typically the adjudicatory, and at the hearing for termination of parental rights. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)()

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; ()

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or ()

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community. ()

11. Compliance with Requirements of the Multiethnic Placement Act of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996. (4-7-11)

a. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin. (4-7-11)

b. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin; (4-7-11)

c. To remain eligible for federal assistance for their child welfare programs, the Department must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes; (4-7-11)

d. A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests; (4-7-11)

e. Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and (4-7-11)

f. Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978. (4-7-11)

12. Family Decision-Making and Plan Development. (3-30-01)

a. A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)

b. Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)

c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

13. Compelling Reasons. Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

14. ASFA Placement Preferences. The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)

a. Return home if safe to do so; (3-30-01)

b. Adoption or legal guardianship by a relative or kin; (5-8-09)

c. Adoption or legal guardianship by non-relative; (3-30-01)

d. Another planned permanent living arrangement such as long-term foster care. (5-8-09)

051. NOTICE REQUIREMENTS FOR ICWA.

~~Wherever these rules require notice to the parent(s) or custodian(s) and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310 SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent(s) or Indian custodian(s) and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who must provide notice to the parent(s) or Indian custodian(s) and tribe.~~ (5-8-09)

01. Notice of Pending Proceedings -- Who Must be Notified. When there is reason to believe that a child is an Indian child, the initial and any subsequent Notice of Pending Proceedings must be sent to the Indian child's parent(s), custodian(s), and tribe. Notices of Pending Proceedings must be sent to the ICWA Designated Agent for the child's tribe via Certified Mail, Return Receipt Requested. All Notices of Pending Proceedings must be received by the child's parent(s), Indian custodian(s) and tribe at least 10 (ten) days before the proceeding is scheduled to occur. Returned receipts are to be kept in the child's file and made available for review by the court. ()

02. Rights Under a Notice of Pending Proceedings. Notices of Pending Proceedings must also include notice of the tribe's right to intervene; their right to twenty (20) additional days to prepare for the proceedings; the right to appointment of counsel if the parent(s) or Indian custodian(s) are indigent; and the right to examine all documents filed with the court upon which placement may be based. ()

03. Notice of Pending Proceedings--When Identity or Location of Parent(s), Indian Custodian(s), or Tribe is Unknown. If the identity or location of the parent(s) or Indian custodian(s) or the tribe is unknown, the Notice of Pending Proceedings must be sent to the Secretary of the Interior by certified mail with a return receipt requested at the following address: Department of the Interior, Bureau of Indian Services, Division of Human Services, Code 450, Mail Stop, 1849 C Street N.W., Washington, D.C. 20240. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. PERMANENCY HEARINGS.

By the provision of Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must have a permanency hearing conducted by the court or a court designee. Permanency hearings must be held no later than every twelve (12) months after the date of the child's placement in alternate care and no later than every twelve (12) months thereafter as long as the child remains in alternate care. A twelve (12) month permanency hearing will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department. (5-8-09)

01. Attendance at Permanency Hearings. The permanency hearing includes, at a minimum, the child's parent(s) or legal guardian(s), foster parent(s) of a child, and any preadoptive parent(s) or relative(s) providing care for the child. In the case of an Indian child, the child's tribe and Indian custodian (*if there is one*), must also be *included* **encouraged to participate** in the permanency hearing. Parties will be provided, by the court, with written notice of the hearing and of their right to be heard. This is not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis the receipt of such notice. ~~(5-8-09)~~()

02. Judicial Determinations. (3-30-01)

a. The court, or an officer designated by the court, will determine if the Department has made reasonable efforts to finalize a permanent plan for the child and issue an order specifying the permanent plan. (5-8-09)

b. In cases where the Department has documented, in the alternate care plan component of the family's service plan, compelling reasons for not terminating the parent and child relationship, the court reviews and determines if the compelling reasons exist. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

400. AUTHORITY FOR ALTERNATE CARE SERVICES.

Upon approval of the regional Child and Family Services Program Manager or his designee, the Department may provide or purchase alternative care under the following conditions: (5-8-09)

01. Department Custody. When the child is in the legal custody or guardianship of the Department; or (3-18-99)

02. Voluntary Placement. Upon agreement with the parent(s) or legal guardian(s) when circumstances interfere with their provision of proper care or they are no longer able to maintain a child in their home and they can benefit from social work and treatment services. A service plan and an out-of-home placement agreement must be developed between the Department and the family. The service plan will identify areas of concern, goals, desired results, time frames, tasks and task responsibilities. The out-of-home placement agreement will include the terms for reimbursement of costs with any necessary justification for deviation from Child Support guidelines. A voluntary agreement for out-of-home placement entered into between the Department and the parent(s) or legal guardian(s) of a minor child may be revoked at any time by the child's parent(s) or legal guardian(s) and the child must be returned to the parent or legal guardian upon their request. A contract between the Department and the service provider, if applicable, must also be in effect. Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. (~~5-8-09~~)()

401. CONSIDERATIONS FOR PLACEMENT IN ALTERNATE CARE.

The Department will make meaningful reasonable attempts, both verbally and in writing, to inform in priority order, individuals identified below of the potential imminent placement and the requirements for consideration as a placement resource. The Department will place children in a safe and trusted environment consistent with the best interest and special needs of the children as required by P.L.96-272, Section 475(5). Ideally, placement priority will be given in the following order: (a) Immediate family; (b) Extended family members; (c) Non-family members with a significant established relationship with the child; (d) other licensed foster parent(s). Upon immediate contact with persons in categories a) through d) above, and after preliminary screening, within seventy-two (72) hours of decision to place, Departmental staff will make reasonable attempts to inform immediate family members of the way to become a placement resource. Alternate care placement will in all cases include consideration of: (5-8-09)

01. Family Assessment. The family assessment conducted in accordance with the provisions of the *FACS CFS Practice Manual Standards*. ~~(3-30-01)~~()

02. Ability of Providers. The ability of potential alternate care providers to address and be sensitive to the unique and individual needs of the child and ability to comply and support the plan for the child and their family. (3-18-99)

03. Family Involvement. The involvement of the family in planning and selecting the placement. The Department will use a family unity meeting concept making reasonable efforts to gather immediate and extended family members and other significant supporters to identify family strengths relevant to creating a safe environment for the child. This process will be fully reported to the court along with resulting plans and commitments. (5-8-09)

402. INVOLUNTARY PLACEMENT OF INDIAN CHILDREN.

Involuntary placement of an Indian child in foster care must be based upon clear and convincing evidence, including information from qualified expert witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. ~~Foster care placement must be in the least restrictive setting that most approximates a family and in which any special needs may be met.~~ In the absence of good cause to the contrary, a preference must be given to placement with: ~~(5-8-09)~~()

01. Extended Family. A member of the Indian child's extended family; (3-18-99)

02. Foster Home Approved by Tribe. A foster home licensed; ~~or~~ approved; ~~or specified~~ by the Indian child's tribe; ~~(3-18-99)~~()

03. Licensed Indian Foster Home. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (3-18-99)

04. Indian Institution. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

~~435. PERIODIC REVIEW OF BENEFITS FROM BUREAU OF INDIAN AFFAIRS (BIA). RESERVED~~

~~Field offices must contact the Bureau of Indian Affairs and review periodically benefits that may be available to children in foster care. (3-18-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

480. ALTERNATE CARE LICENSURE.

All private homes and facilities providing care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed, ~~or~~ approved ~~or~~ *specified* by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

556. REPORTS INVOLVING INDIAN CHILDREN.

Possible abuse, neglect, or abandonment of a child who is known or ~~suspected~~ *believed* to be Indian will be reported to appropriate tribal authorities immediately. If the reported incident occurs off a reservation, the Department will perform the investigation. The Department will also investigate incidents reported on a reservation if requested to do so by appropriate authorities of the tribe. A record of any response will be maintained in the case record and written documentation will be provided to the appropriate tribal authorities. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

559. CHILD PROTECTION SAFETY AND COMPREHENSIVE ASSESSMENTS.

The Department's safety and comprehensive assessments must be conducted in a standardized format and must utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(ren) involved and the immediate family and a records check for history with respect to child protection issues. (4-7-11)

01. Interview of a Child. The interview of a child concerning a child protection report must be conducted: (3-30-07)

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview must: (3-30-07)

a. Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the family services worker and his supervisor must be given to ensure the family has a contact for questions and concerns that may arise following the visit; (3-30-07)

b. ~~Determine~~ **Inquire** if the family is ~~of~~ Indian, **or has Indian** heritage, for the purposes of ICWA; (~~3-18-99~~)()

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

03. Collateral Interviews. Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

04. Completion of a Comprehensive Assessment. A Safety Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When safety threats are identified in the safety assessment and the case remains open for services, a comprehensive assessment must be completed. (4-7-11)

05. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

a. Interviewing the alleged perpetrator; (3-18-99)

b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)

c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

06. Notification of the Person Who Made the Referral. The Department must notify the person who made the child protection referral when the safety assessment has been completed. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

710. FAMILY HISTORY.

If the family case plan is termination of parental rights and adoption is considered a part of the total planning for the child, the following information will be obtained and placed in the child's permanent adoption record: (5-8-09)

- 01. Informational Forms.** Informational background forms regarding the birth mother, birth father, and the child. (3-18-99)
- 02. Hospital Records.** Hospital birth records on child. (3-18-99)
- 03. Evaluations/Assessments.** Evaluations/Assessments previously completed on child. (3-18-99)
- 04. Current Picture.** Current picture of child. (3-18-99)
- 05. Narrative Social History.** Child and family's narrative social history that addresses: (5-8-09)
 - a.** Family dynamics and history; (3-18-99)
 - b.** Child's current functioning and behaviors; (3-18-99)
 - c.** Interests, talents, abilities, strengths; (3-18-99)
 - d.** Child's cultural and racial identity needs. The ability to meet the cultural and racial needs of the child does not necessitate a family have the same culture or race as the child; (3-18-99)
 - e.** Life story, moves, reasons, key people; (3-18-99)
 - f.** Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (3-18-99)
 - g.** Medical, developmental and educational needs; (3-18-99)
 - h.** Child's history, past experiences, and previous trauma; (3-18-99)
 - ~~**i.** Indian child's membership or eligibility for membership in tribe(s);~~ (3-18-99)
 - ~~**ji.** Membership or eligibility for membership in, and social and cultural contacts with parent's tribe(s) of parent(s), if any, including names and addresses of extended family and membership in tribe(s);~~ (3-18-99)()
 - ~~**kj.** Indian child's contacts with tribe(s) Indian ancestry;~~ (3-18-99)()
 - ~~**lk.** Individualized recommendations regarding each child's need for permanency; and~~ (3-18-99)
 - ~~**ml.** Reasons for requesting termination of parental rights.~~ (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

- 01. Allegations.** The allegations contained in the petition. (3-30-01)
- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family, or what active efforts to prevent the breakup of the Indian family have been made. ~~(3-30-01)~~()
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
 - a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
 - b.** The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, and requires individualized documentation regarding the child's needs in permanent placement. (4-7-11)
- 08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if

so: (3-30-01)

a. Notification of the pending proceedings ~~by registered mail with return receipt requested,~~ to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location ~~cannot be determined~~ is unknown according to Section 051 of these rules; ~~(5-3-03)~~()

b. Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)

c. Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the right to court-appointed counsel; (5-8-09)

d. Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)

e09. Termination of Parent-Child Relationship. ()

a. A recommendation and the reasons ~~therefor as to~~ whether or not termination of the parent and child relationship is in the best interest of the child; and ~~(3-30-01)~~()

b. Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. ~~(3-30-01)~~()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-1003

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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, Idaho Code, notice is hereby given this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, 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 Department of Health and Welfare's Self-Reliance Program has adopted rules to allow electronic and telephonic signatures to improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the December 1, 2010, Idaho Administrative Bulletin, Vol. 10-12, pages 153 and 154.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The fiscal impact for this rule change will be minimal to state general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Rosie Andueza at (208) 334-5553.

DATED this 7th day of April, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is **January 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, 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 December 15, 2010.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule:

In recent years, the Department of Health and Welfare's Self-Reliance Program has implemented many technological and process improvements including a new case management system, consolidated service centers, and electronic case records. These improvements have allowed the Department to meet the ever increasing need for services while maintaining quality. In order to further maximize on these improvements, electronic and telephonic signatures will further streamline practices, improve access to services, increase productivity, and better utilize technology and other solutions to connect customers with services.

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

The Department closed ten field offices in 2010, reducing the number of locations that customers can access our services. Allowing for electronic and telephonic signatures improves access for our rural state where offices are not always close by and helps to support communities where offices were closed.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The fiscal impact for this rule change will be minimal to state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated

rulemaking was not conducted since these changes confer a benefit.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

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 December 22, 2010.

DATED this 5th day of November, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1003

012. -- ~~099~~50. (RESERVED).

051. SIGNATURES.

An individual who is applying for benefits, receiving benefits, or providing additional information as required by this chapter, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

()

052. -- 099. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.09 - MEDICAL FEES

DOCKET NO. 17-0209-1102

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective on July 1, 2012, 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 Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, 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:

An effective date of July 1, 2012 has been added to the medical fee schedule in 17.02.09.031.03. The delayed effective date from sine die to July 1, 2012 will allow providers and payors time to adjust their billing and payment systems.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 405 through 409.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Patti Vaughn, Medical Fee Schedule Analyst, (208) 334-6084.

DATED this November 4, 2011.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-2321

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, 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 October 25, 2011.

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:

Provides the annual adjustment of the medical fee schedule for physician reimbursement in accordance with Section 72-803, Idaho Code. The reference to individual status codes is removed from Subsection 032.02(c)(i), due to occasional additions and deletions made by CMS that could require annual rule changes. As authorized by Section 72-803, Idaho Code, the Conversion Factors in Section 031 are being adjusted.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because, as authorized by Section 72-803, Idaho Code, the Commission adopted a rule, IDAPA 17.02.09.031.05, providing for the annual adjustment of medical fee conversion factors in order to reflect any changes in inflation or market conditions. Negotiations about such changes would not be productive.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6084.

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 October 26, 2011.

DATED this 29th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0209-1102

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY PHYSICIANS UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided by physicians under the Idaho Workers' Compensation Law. (4-7-11)

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by physicians. (4-7-11)

02. Adoption of Standard for Physicians. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by physicians. (4-7-11)

03. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Anesthesia	00000 - 09999	Anesthesia	\$60.05 <u>60.33</u>

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	\$140.00
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	\$113.52
Surgery - Group Four	10000 - 12999 20000 - 20615 29000 - 29799 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Integumentary System Musculoskeletal System Casts & Strapping Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	\$87.72
Radiology	70000 - 79999	Radiology	\$87.72 <u>88.54</u>
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	\$47.00
Medicine - Group Two	90800 - 92999 93000 - 93999 95000 - 96020 96040 - 96999 99000 - 99607	Psychiatry & Medicine Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures Assessments & Special Procedures E / M & Miscellaneous Services	\$68.50

(4-7-11)()

04. Anesthesiology. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units

will not be used for CPT Code 01996. (4-7-11)

05. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions in accordance with Section 72-803, Idaho Code. (4-7-11)

06. Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.03, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Section 034, below. (4-7-11)

07. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: (4-7-11)

- a.** Modifier 50: Additional fifty percent (50%) for bilateral procedure. (4-7-11)
- b.** Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (4-7-11)
- c.** Modifier 80: Twenty-five percent (25%) of coded procedure. (4-7-11)
- d.** Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (4-7-11)

032. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY HOSPITALS AND AMBULATORY SURGERY CENTERS UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by hospitals and ambulatory surgery centers under the Idaho Workers' Compensation Law. (1-1-12)

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by hospitals and ambulatory surgery centers. (1-1-12)

02. Adoption of Standards for Hospitals and ASCs. The following standards shall be used to determine the acceptable charge for hospitals and ambulatory surgery centers. (1-1-12)

- a.** Critical Access and Rehabilitation Hospitals. The standard for determining the acceptable charge for inpatient and outpatient services provided by a critical access or rehabilitation hospital is ninety percent (90%) of the reasonable charge. Implantable hardware charges shall be reimbursed at the rate of the actual cost plus fifty percent (50%). (1-1-12)

b. Hospital Inpatient Services. The standard for determining the acceptable charge for inpatient services provided by hospitals, other than critical access and rehabilitation hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate for inpatient services is ten thousand dollars (\$10,000). Inpatient services that do not have a relative weight shall be paid at eighty-five percent (85%) of the reasonable charge; however, implantable hardware charges billed for services without an MS-DRG weight shall be reimbursed at the rate of actual cost plus fifty percent (50%). (1-1-12)

c. Hospital Outpatient and Ambulatory Surgical Center (ASC) Services. The standard for determining the acceptable charge for outpatient services provided by hospitals (other than critical access and rehabilitation hospitals) and for services provided by ambulatory surgical centers is calculated by multiplying the base rate by the Medicare Hospital Outpatient Prospective Payment System (OPPS) APC weight in effect on the first day of January of the current calendar year. The base rate for hospital outpatient services is one hundred and thirty-eight dollars (\$138). The base rate for ASC services is ninety dollars (\$90). (1-1-12)

i. ~~If Medical services for which~~ there is no ~~APC~~ weight listed ~~for APC status codes A, B, C, D, E, F, G, H, K, L, M, Q, S, T, V, X, or Y, then reimbursement~~ shall be ~~reimbursed at~~ seventy-five percent (75%) of the reasonable charge. ~~(1-1-12)()~~

ii. Status code N items (other than implantable hardware) or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment. (1-1-12)

iii. Two or more medical procedures with a status code T on the same claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status code T items paid at fifty percent (50%). (1-1-12)

iv. Status code Q items with an assigned APC weight will not be discounted. (1-1-12)

d. Hospitals Outside of Idaho. Reimbursement for services provided by hospitals outside the state of Idaho may be based upon the agreement of the parties. If there is no agreement, services shall be paid in accordance with the workers' compensation fee schedule in effect in the state in which services are rendered. If there is no hospital fee schedule in effect in such state, or if the fee schedule in that state does not allow reimbursement for the services rendered, reimbursement shall be paid in accordance with these rules. (1-1-12)

e. Additional Hospital Payments. When the charge for a medical service provided by a hospital (other than a critical access or rehabilitation hospital) meets the following standards, additional payment shall be made for that service, as indicated. (1-1-12)

i. Inpatient Threshold Exceeded. When the charge for a hospital inpatient MS-DRG coded service exceeds the sum of thirty thousand dollars (\$30,000) plus the payment calculated under the provisions of Subparagraph 032.02.b. of this rule, then the total payment for that service shall be the sum of the MS-DRG payment and the amount charged above that threshold multiplied by seventy-five percent (75%). Implantable charges shall be excluded from the calculation for an additional inpatient payment under this Subparagraph. (1-1-12)

ii. Inpatient Implantable Hardware. Hospitals may seek additional reimbursement beyond the MSDRG payment for invoiced implantable hardware where the aggregate invoice cost is greater than ten thousand dollars (\$10,000). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed three thousand dollars (\$3,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

iii. Outpatient Implantable Hardware. Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced implantable hardware where the aggregate invoice cost is greater than five hundred dollars (\$500). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed one thousand dollars (\$1,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

03. Disputes. The Commission shall determine the acceptable charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Section 034 of this rule. (1-1-12)

04. Adjustment of Hospital and ASC Base Rates. The Commission may periodically adjust the base rates set out in Subparagraphs 032.02.b. and 032.02.c. of this rule to reflect changes in inflation or market conditions. (1-1-12)

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.11 - RULES GOVERNING SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 Sections 72-508, 72-520, 72-721, 72-722, and 72-723, 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 complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 410 through 420.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jane McClaran, (208) 334-6042.

DATED this 4th day of November, 2011.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720
Boise, ID 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-2321

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

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

Wednesday, October 12, 2011 10:00 a.m. - 12:00 p.m.	Thursday, October 20, 2011 10:00 a.m. - 12:00 p.m.	Monday, October 24, 2011 10:00 a.m. - 12:00 p.m.
Ameritel Inn - Spectrum 2501 S. 25th Street East Ammon, Idaho 83406	Best Western Coeur d'Alene Inn 700 S. Clearwater Lane 506 W. Appleway Ave. Coeur d'Alene, ID 83814	Industrial Commission 700 S. Clearwater Lane Boise, ID 83712

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:

Adds to the requirements for public and private employers applying for approval to become self-insured; Expands on the acceptable forms of security; Adds provisions to better ensure that security deposits are sufficient to cover the employer's liabilities and provides credit for excess insurance policies; Changes the reporting requirements and forms to capture the outstanding liabilities of a self-insured employer for workers' compensation which helps in determining their security deposit requirements and ensure injured workers are adequately covered.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted through a subcommittee of the Commission's Advisory Committee. All self-insured employers in the state of Idaho were invited to attend these meetings and those employers provided input to the Industrial Commission on the drafting of these rule revisions. Subcommittee members and the Advisory Committee members reached consensus to proceed

with the changes being submitted.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

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 October 26, 2010.

DATED this 17th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0211-1101

012. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

01. Compensation. All benefits payable under the provisions of the Idaho Workers Compensation Law. ()

02. Indemnity Benefits. All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. (4-7-11)

03. Indemnity Claim. Any claim made for the payment of indemnity benefits. (4-7-11)

04. Payroll. The gross amount paid by an employer for salaries, wages or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. (4-7-11)

013. RULES GOVERNING QUALIFICATIONS OF SELF-INSURED EMPLOYERS.

In order to be considered for approval by the Industrial Commission to self-insure under Section 72-301, Idaho Code, an employer shall comply with the following requirements: (4-7-11)

01. Payroll. Have an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000); (4-7-11)

02. Application. Submit a completed application, available from the Industrial Commission's Fiscal Section, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Section, at 700 S. Clearwater Lane, PO Box 83720-0041, Boise, Idaho 83720-0041; telephone (208) 334-6000. (4-7-11)

03. Documentation. Submit documentation satisfactory to the Commission demonstrating the sound financial condition of the employer, such as the most recent CPA reviewed or, if available, audited, financial statement; (4-7-11)

04. Adjuster. Designate in writing a licensed Idaho resident adjuster; (4-7-11)

05. Previous Claims. Provide a history of all workers' compensation claims filed with the employer or the employer's workers' compensation carrier, as well as all compensation paid, during the previous ~~three~~ five (~~3~~5) calendar years. (~~4-7-11~~)()

06. Excess Insurance. Provide an insurance plan and copies of all proposed policies of excess workers' compensation insurance coverage. ()

07. Actuarial Study. Provide an actuarial study prepared by a qualified actuary determining adequate rates for the proposed self-funded worker's compensation plan based upon a fifty percent (50%) confidence level. ()

08. Feasibility Study. Provide a self-insurance feasibility study that includes an analysis of the advantages and disadvantages of self insurance as compared to current coverage, and the related costs and benefits. ()

069. Custodial Agreement. Set up a custodial agreement with the State Treasurer for securities required to be deposited under Sections 72-301 and 72-302, Idaho Code; (4-7-11)

~~07~~**10. Supplemental Information.** Provide supplemental information as requested; (4-7-11)

~~08~~**11. Initial Security Deposit.** Prior to final approval, deposit an initial security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form set forth in Subsection 014.02, of this rule, in the amount of one hundred and fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000.00) of the employer's average annual payroll in the state of Idaho for the three (3) preceding years; along with such additional security as may be required by the Commission based on prior claims history; (4-7-11)

~~09~~**12. Written Approval.** Obtain written approval from the Industrial Commission. (4-7-11)

014. CONTINUING REQUIREMENTS FOR SELF-INSURED EMPLOYERS.

Upon receiving the approval of the Industrial Commission to be a self-insured employer under Section 72-301, Idaho Code, to continue such approval a self-insured employer shall comply with the following requirements: (4-7-11)

01. Payroll Requirements. Maintain an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000), ~~if such employer was originally approved by the Commission subsequent to April 30, 1984, and two million dollars (\$2,000,000) if such employer was originally approved by the Commission prior to May 1, 1984; provided, however, that any employer who was an approved self-insured employer on July 1, 1974 need not comply with the provisions of this section.~~ Any self-insured employer that does not meet the payroll requirements of this rule for two consecutive semi-annual premium tax reporting periods shall be allowed to maintain their self-insured status for six (6) months from the end of the last reporting period in order to permit them time to increase their payroll or obtain workers' compensation coverage with an insurance carrier authorized to write workers' compensation insurance in the state of Idaho. (4-7-11)()

02. Security Deposit with Treasurer. (4-7-11)

a. Maintain a **primary** security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, ~~or~~ a self-insurer's bond in substantially the form set forth below, **or in such other form approved by the Commission**, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the employers' average annual payroll in the state of Idaho for the three (3) preceding years, not in excess of ten million dollars (\$10,000,000) ~~if such employer was originally approved by the Commission subsequent to April 30, 1984; and five million dollars (\$5,000,000) if such employer was originally approved by the Commission prior to May 1, 1984.~~ In addition thereto, the self-insured employer shall deposit additional security in **an such** amount ~~equal to all outstanding and unpaid awards of as the Commission determines is necessary to secure the self-insured employer's total unpaid liability for~~ compensation under the Workers' Compensation Law. (4-7-11)()

b. Self-insured employers shall receive a credit for the primary security deposit against the self-insured employer's obligation to post the additional security required by Subsection 014.02.a. of this rule. ()

c. Excess insurance coverage approved by the Commission may apply as a credit against the self-insured employer's obligation to post the additional security required by Subsection 014.02.a. of this rule. The Commission must be provided with thirty (30) days advance written notice of any change or cancellation of an approved excess insurance policy. ()

bd. All security deposited by the self-insured employer shall be maintained as provided by Section 72-302, Idaho Code. (4-7-11)

ee. Any withdrawal or partial release of security deposited hereunder must be requested in writing and approved by the Commission. (4-7-11)

SELF-INSURER'S COMPENSATION BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____,
a corporation of the State of _____, hereinafter called the Principal, as Principal, and the
_____, a surety corporation authorized to transact a surety
business in the State of Idaho, as Surety, are held and firmly bound unto the State of Idaho, for the

use and benefit of all those employees of the Principal to whom or to the dependents of whom the Principal may, during the life of this bond, become liable for benefits under the Idaho Workers' Compensation Law, as hereinafter more fully referred to, in the sum equal to and limited by the sum or sums that may become due and/or payable by said Principal to said employees under the terms, provisions and limitations of said Workers' Compensation Law, and in accordance with the terms, agreements, conditions and limitations of this obligation not exceeding, however, the sum of _____ dollars, for the payment of which, well and truly made, the Principal well and truly binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, well and truly by these presents.

WHEREAS, in accordance with the provisions of Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, and Principal has elected to secure compensation to its employees by depositing and maintaining with the Industrial Commission of Idaho a surety bond issued and executed by the surety herein named, which surety is duly qualified to transact such business in the state of Idaho subject to the approval of the Industrial Commission of the State of Idaho.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay compensation according to the terms, provisions, and limitations of Idaho Code, Title 72, Chapter 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, to its injured employees or the dependents of its killed employees contemplated by the terms of and covered under the said law, and shall furnish medical, surgical, nursing and the hospital services and attention and funeral expenses as provided for in said law (all of which shall be understood to be included in the term "compensation" as hereinafter used), then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however to the following express conditions and agreements:

That any employee or the dependent of any employee of the Principal entitled to compensation under said Workers' Compensation Law, shall have the right to enforce in his own name the liability of the Surety hereunder, in whole or in part, for such compensation, either by at any time filing a separate claim against the Surety or by at any time making the Surety a part of the original claim against the employer; provided, however, that payment in whole or in part of such compensation by either the Principal or the Surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

That as between the employee and the Surety, notice to or knowledge of the occurrence of injury on the part of the employer shall be deemed notice to or knowledge, as the case may be, on the part of the Surety; that the obligation of the Surety, and the Surety, shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the Principal for the payment of compensation under the provisions of the Workers' Compensation Law aforesaid, and that the insolvency or bankruptcy of the Principal and its discharge therein, shall not relieve the Surety from the payment of compensation for injuries, including death resulting therefrom, sustained during the life of this bond by an employee of the Principal covered under the Workers' Compensation Law.

That upon request of the Industrial Commission of Idaho, it will make such changes in this form of bond by endorsement to be attached hereto or by the execution of a surety bond replacing this one, as the said Commission may deem requisite, to bring this bond into conformity with its

rulings as to the form of surety bond required of employers under Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto.

This bond is issued for an indefinite term to begin on the _____ day of _____, 20__, and will continue in full force and effect until terminated in either of the following two manners: This bond may be cancelled by the Surety by filing sixty (60) days written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN TESTIMONY WHEREOF, the said Principal and said Surety have caused these presents to be executed in due form this _____ day of _____, 20__.

Countersigned

By

Resident Agent

Principal

SEAL

SEAL

By

By

Samples of this form are available from the Fiscal Section of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, Telephone (208) 334-6000.

(4-7-11)

03. Maintain a Licensed Resident Adjuster. Maintain a resident licensed claims adjuster located within the state of Idaho who shall have full authority to service said claims on behalf of the employer including, but not limited to, the following: (4-7-11)

a. Investigate and adjust all claims for compensation; (4-7-11)

b. Pay all compensation benefits due; (4-7-11)

c. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; (4-7-11)

d. Enter into compensation agreements and lump sum settlements with Claimants; (4-7-11)

e. Provide at the employer's expense necessary forms to any employee who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

04. File Reports. Report to the Industrial Commission ~~at the end of each calendar quarter~~ semi-annually, or more often as required by the Commission, total unpaid liability on all outstanding and unpaid awards of compensation open claims. (4-7-11)()

a. The **semi-annual** report of ~~outstanding and unpaid awards~~ **total unpaid liability** shall be filed with the Industrial Commission by the end of the months ~~following the end of each calendar quarter~~ **of January and July.** (4-7-11)()

b. **The report shall provide the aggregate number of open claims, including indemnity with medical and medical only claims, along with the amount of any compensation paid on open claims, as of the end of each June and December.** ()

~~**bc.**~~ The report shall be filed even if there are no ~~outstanding awards~~ **open claims.** In that event, the employer shall certify the fact that there are no ~~outstanding awards~~ **open claims** to be reported. (4-7-11)()

~~**ed.**~~ The report shall be submitted on or in a format that is substantially the same as Form ~~IC36B IC-211~~, "~~Report of Outstanding Awards—Self-Insured Employers~~ **Report of Total Unpaid Liability**," which follows this chapter as Appendix A. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 ½" x 11") in size. (4-7-11)()

~~**de.**~~ The report shall be signed and certified to be correct by a corporate officer. If an employer has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the employer shall prepare, certify and file a consolidated report of all ~~outstanding and unpaid compensation awards~~ **liability.** (4-7-11)()

~~**e.**~~ ~~The report shall list all outstanding awards at the beginning and end of the reporting period, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs first, along with the amount of any compensation paid on each claim during the reporting period.~~ (4-7-11)

f. A self-insured employer shall also make such other reports to the Commission as it may require in reference to matters under the Workers' Compensation Law. (4-7-11)

05. Submit to Audits by Industrial Commission. Each year a self-insured employer shall provide the Industrial Commission with a copy of its annual financial statements, or other acceptable documentation. Each self-insured employer shall submit to audit by the Commission or its designee at any time and as often as it requires to verify the amount of premium such self-insured employer would be required to pay as premium to the State Insurance Fund, and to verify compliance with the provisions of these rules and the Idaho Workers' Compensation Law. (4-7-11)

06. Comply with Law and Rules. Comply with the statutes of the state of Idaho and the rules of the Industrial Commission to the end that payment of compensation shall be sure and certain and not unnecessarily delayed. The Commission may withdraw its approval of any employer to operate as a self-insurer if it shall appear to the Commission that workers secured by said self-insured employer are not adequately protected and served, or the employer is failing to comply with the provisions of these rules or the Workers' Compensation Law. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

271. RULE GOVERNING REPORTING INDEMNITY AND MEDICAL PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, every authorized self-insurer authorized to self-insure its workers' compensation obligations in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. (4-7-11)

01. Filing. The report of indemnity and medical payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report; which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. (~~4-7-11~~)()

02. Form. The report of indemnity and medical payments shall be submitted in writing on, or in a format substantially the same as Form IC2-327, "Report of Indemnity Payments Workers' Compensation Claims Involving Medical Payments Only and Claims Involving Indemnity Payments Report," contained in Appendix B at the end of this chapter. (~~4-7-11~~)()

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. (4-7-11)

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity and medical payments later than March 3rd each year. (~~4-7-11~~)()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. (4-7-11)

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. (4-7-11)

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. (4-7-11)

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity and medical payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). (~~4-7-11~~)()

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. (4-7-11)

272. -- 999. (RESERVED)

APPENDIX A

IC36B – REPORT OF OUTSTANDING AWARDS – SELF-INSURED EMPLOYERS

(Name of Self-Insured Employer) _____							
Calendar Year: _____							
For Calendar Quarter Ending: qMarch qJune qSeptember qDecember							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Date of Injury	Claimant Name (as shown on First Report of Injury)	Type of Claim	Total Awards	Compensation Paid This Report Period	Total Compensation Paid to Date	Adjustments	Unpaid Balance – [(4) minus (5)]
TOTALS							

Send Original to: Fiscal Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0044

I, the undersigned corporate officer of the above named self-insured employer, do hereby certify that this report is complete and accurate to the best of my knowledge.

Corporate Officer's Signature: _____

Title: _____

Printed Name: _____

Date: _____

Name and Title of Preparer: _____

Company: _____

Address: _____

Telephone: _____ **E-Mail Address:** _____

Page _____ Of _____

APPENDIX A

<u>IC-211. SELF- INSURED EMPLOYER REPORT OF TOTAL UNPAID LIABILITY</u>							
<u>(Name of Self-Insured Employer)</u>							
<u>Calendar Year: _____</u>							
<u>For Calendar Semiannual Period Ending and As Of:</u>						<u>June</u>	<u>December</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>	<u>(7)</u>	<u>(8)</u>
<u>Total Number of Open Claims</u>	<u>Total Incurred Medical Only</u>	<u>Total Paid Medical Only</u>	<u>Total Unpaid Medical Only (2 – 3 = 4)</u>	<u>Total Incurred Indemnity incl. Medical</u>	<u>Total Paid Indemnity incl. Medical</u>	<u>Total Unpaid Indemnity (5 – 6 = 7)</u>	<u>Total Unpaid Liability (4 + 7 = 8)</u>
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
<u>Note: Report Open Claim Totals for All Previous Periods of Self Insurance in Idaho.</u>							
<u>Total Unpaid Liability from Column 8:</u>							<u>\$0.00</u>
<u>Excess Insurance Carrier Reimbursement Expected:</u>							<u>\$0.00</u>
<u>Net Remaining Unpaid Liability:</u>							<u>\$0.00</u>
<u>Note: Credit for Excess Insurance is contingent upon meeting criteria acceptable to the Idaho Industrial Commission.</u>							
<u>Excess Carrier Reimbursement Detail:</u>							
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>	<u>(7)</u>	<u>(8)</u>
<u>Date Of Injury</u>	<u>Claimant Name</u>	<u>Total Medical & Indemnity Incurred</u>	<u>Total Medical & Indemnity Paid</u>	<u>Excess Carrier Name</u>	<u>Specific Retention Limit</u>	<u>Excess Reimbursement Expected</u>	<u>Excess Reimbursement Obtained</u>
_____	_____	_____	_____	_____	_____	_____	_____
						<u>Subtotal:</u>	
<u>Self-Insurer's Authorization and Validation</u>							
I, _____ <u>certify that the above information is valid and truthful to the best of my knowledge.</u>							
<u>Corporate Officer's Signature</u>				<u>Printed Name and Title</u>			
<u>Date:</u>							

Notary Public for _____.

Residing at _____.

My term expires: _____.

APPENDIX B

<u>Idaho Industrial Commission</u>	<u>Physical mail address:</u>
<u>P.O. Box 83720</u>	<u>700 S. Clearwater Lane</u>
<u>Boise, Idaho 83720-0041</u>	<u>Boise, Idaho 83712</u>
<u>IC2-327 - Workers' Compensation Claims Involving Medical Payments Only and Claims Involving Indemnity Payments Report</u>	
<u>Company Name and Address</u>	<u>FEIN:</u>
	<u>Reporting period:</u>
<u>MEDICAL ONLY CLAIMS:</u>	
<u>(A) Total number of medical-only claims on which payments were made during the reporting period:</u>	
<u>(B) Total amount paid on medical-only claims during the reporting period:</u>	<u>\$ _____</u>
<u>INDEMNITY CLAIMS</u>	
<u>(C) Total number of indemnity claims on which payments (including any medical payments) were made during the reporting period:</u>	
<u>(C) Total amount of indemnity payments (not including medical payments) during the reporting period:</u>	<u>\$ _____</u>
<u>Total amount of all indemnity claims payments (including medical payments on indemnity claims only.)</u>	<u>\$ _____</u>
<u>Certification</u>	
<u>State of _____ County of _____</u>	
<u>I, _____, being duly sworn on oath, state that I have read the foregoing report which sets forth certain information relating to medical and indemnity payments made during the reporting period, that I know the contents, and that I certify the report is true and correct to the best of my knowledge.</u>	
<u>Signature of Preparer:</u>	<u>Print Name:</u>
<u>Telephone:</u>	
<u>Email Address:</u>	<u>Fax:</u>
<u>SUBSCRIBED AND SWORN to before me on this _____ day of _____</u>	
<u>The ISIF assessment billing should be sent to:</u>	
<u>Name:</u>	<u>Notary Public for</u>
<u>Please Print</u>	

<u>Title:</u>	<u>My commission expires:</u>
<u>Address:</u>	
<u>City, State, Zip</u>	
<u>Phone:</u>	
<u>NOTE: Failure to file this form is a misdemeanor under Section 72-327 Idaho Code. This form is to be submitted annually with the Idaho Semi-Annual Workers; Compensation Premium Tax Report. IC2-327 (rev. 6/25/2009)</u>	

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.07 - RULES FOR EDUCATION AND TRAINING PROGRAMS FOR VETERANS

DOCKET NO. 21-0107-1101 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 Sections 65-202 and 65-204, 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 complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 498 through 502.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

DATED this 27th day of October, 2011.

Jim Adams
Administrative Support Manager
Division of Veterans Services
320 Collins Rd.
P. O. Box 83720
Boise, ID 83720-0092
Phone: (208) 246-8770
Fax: (208) 334-2627

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is **August 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-202 and 65-204, 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 October 19, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Veterans Education Program was transferred to the Division of Veterans Services in 2009. The rules governing the program remained, however, in the rules of the State Board of Education. The changes are necessary to correct this oversight. The changes revise and transfer rules governing the Division of Veterans Services' administration of federal requirements for Veterans Education Programs.

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

The rule changes are necessary to comply with prior changes made to the current law regarding veterans education and training programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the

following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The provisions of 38 U.S.C. chapter 36 and the regulations of the U.S. Department of Veterans' Affairs located at 38 CFR part 21 contain the substantive provisions governing the approval of education and training programs and licensing and certification tests to which veterans education benefits may be applied. As authorized by Section 67-5229(3), Idaho Code, the statutes within 38 U.S.C. chapter 36 and the regulations within 38 CFR part 21, in effect as of August 1, 2011, are incorporated by reference into this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

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 October 26, 2011.

DATED this 26th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0107-1101

IDAPA 21
TITLE 01
CHAPTER 07

21.01.07 - RULES FOR EDUCATION AND TRAINING PROGRAMS FOR VETERANS

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Administrator of the Division of Veterans Services the authority to promulgate rules governing programs offered by the United States Department of Veterans Affairs for the certification and supervision of educational and training opportunities for veterans pursuant to Sections 65-202 and 65-204, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 21.01.07, "Rules for Education and Training Programs for Veterans." ()

02. Scope. These rules contain the administrative provisions and state of Idaho

requirements applicable to the Division of Veterans Services' approval of education and training programs and licensing and certification tests to which veterans education benefits may be applied. The federal substantive provisions governing the approval of education and training programs and licensing and certification tests are contained in United States Department of Veterans Affairs regulations. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Veterans Services office. ()

003. ADMINISTRATIVE APPEALS.

Contested case appeals shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

Except as set forth herein, the provisions of 38 U.S.C. chapter 36 and the regulations of the U.S. Department of Veterans' Affairs located at 38 CFR part 21 contain the substantive provisions governing the approval of education and training programs and licensing and certification tests to which veterans education benefits may be applied. As authorized by Section 67-5229(3), Idaho Code, the statutes within 38 U.S.C. chapter 36 and the regulations within 38 CFR part 21, in effect as of August 1, 2011, are incorporated herein and will have the same force and effect as if fully set forth. Copies of the referenced federal regulations may be obtained from the USDVA, the Division of Veterans Services, or the Idaho State Law Library. In the event USDVA regulations are re-designated, it is the intent of the Division of Veterans Services that the references herein incorporate such re-designation. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The mailing address and the street address of the office of the Division of Veterans Services is 351 Collins Road, Boise, Idaho 83702. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The telephone number of the Division is (208) 577-2310. The Division's facsimile number is (208) 577-2311. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. FILING OF DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX).

Documents in contested cases shall be filed with the Administrator of the Division of Veterans Services. Unless additional copies are specifically requested by the Administrator, parties may file one (1) copy of any document with the Administrator. Documents, not exceeding ten (10) pages in length and documents requiring urgent or immediate action by the Administrator may be filed with the Administrator by facsimile transmission (FAX). Whenever a document is filed by FAX, originals must be delivered to the Administrator by overnight mail or by hand delivery on the next business day. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

The following words and phrases will have the meanings set forth in Section 010. ()

01. Course. An instructional program, class, on-the-job training activity or similar training or activity subject to approval by the Program under Federal Law. ()

02. Federal Law. The provisions of the United States Code and the Code of Federal Regulations governing Courses and Tests qualified for the application of Veterans Education Benefits. At the time of publication of these rules, such provisions are located at 38 U.S.C. chapter 36 and 38 CFR part 21. ()

03. Program. The Veterans Education Program within the Division of Veterans Services. ()

04. Provider. An organization or entity offering a Test or offering a Course. ()

05. Test. A licensing or certification test subject to approval by the Program under Federal Law. ()

06. USDVA. The United States Department of Veterans' Affairs. ()

07. Veterans Education Benefits. Those benefits provided to veterans and other eligible persons for education and training under Federal Law. ()

011. -- 019. (RESERVED)

020. DIVISION OF VETERANS SERVICES DESIGNATED STATE APPROVAL AGENCY.

As set forth in Section 65-202, Idaho Code, the Division of Veterans Services is the approval agency in the state of Idaho for the purpose of approving Courses and Tests pursuant to Federal Law. The Program is delegated the authority to act on behalf of the Administrator of the Division of Veterans Services as the state approval agency. ()

030. PROGRAM RESPONSIBILITIES.

The Program is responsible for carrying out the duties of a state approval agency concerning Veterans Education Benefits, including the following: ()

01. Additional Requirements. Establishing criteria additional to requirements set forth in Federal Law for approving Courses and Tests. ()

02. Approving Courses and Tests. Approving courses and tests following the criteria set forth in Federal Law or established by the Division of Veterans Services. ()

03. Visiting and Supervising Providers. Regularly visiting and supervising those Providers offering approved Courses and Tests. ()

04. Disapproving Approved Course or Test. Disapproving any approved Course or Test that fails to meet requirements set forth in Federal Law or criteria established by the Division of Veterans Services and notifying the affected Provider and the USDVA of this disapproval. ()

05. Applicable Approval. Providing applicable approval information to Providers and the USDVA. ()

040. APPLICATIONS FOR APPROVAL OF COURSES.

Application for approval. providers desiring to enroll veterans or eligible persons in Courses or conduct Tests to which Veterans Education Benefits may be applied must apply to the Program for approval of such Courses or Tests. Unless otherwise provided in Federal Law, Tests offered by a state or political subdivision are not required to submit an application for approval. ()

01. Application Required For Each Course. The Program grants approval on a Course-by-Course and Test-by-Test basis. The Provider must include in the initial application all Courses or Tests for which it seeks approval by the Program. The Provider must submit an additional application for new or additional Courses or Tests. ()

02. Written Application. All applications for approval must be in writing and on a form or in a format approved by the Program. Applications must contain all information required for the Program to determine if the Course or Test satisfies Federal Law and these rules. ()

03. Applicant and Provider Site Visits. The Program may conduct an on-site visit prior to approval of an application or periodically following approval. Failure to consent to or cooperate with a site visit is a basis for denial of an application or disapproval of a Course or a Test. ()

04. Compliance With Equal Opportunity Laws. Applicants shall provide a signed assurance of compliance with equal opportunity laws satisfying the requirements of Federal Law. ()

050. COURSE AND TEST STANDARDS.

01. General Standards. The Program may deny any Course or Test not in conformance with Federal Law. ()

02. Additional Standards. The Program applies the following standards to Courses and Tests in addition to those set forth in Federal Law: ()

a. Flight training courses. In addition to the requirements in Federal Law, the Program requires that students complete a minimum of thirty (30) hours of instruction per quarter for a flight training course to obtain and maintain approval. ()

03. Precluded Courses and Tests. The Program may deny applications for approval of any Course or Test where the USDVA may deny the enrollment of a veteran under Federal Law or deny the application of Veterans Education Benefits under Federal Law. ()

060. APPROVAL AND DENIAL OF COURSES AND TESTS.

01. Notices of Approval or Denial. ()

a. Notice of approval. Upon determining that a Provider has complied with all the requirements for approval of a Course or Test, the Program will notify the Provider and the USDVA by correspondence complying with Federal Law. ()

b. Notice of denial. Upon determining that a Provider has not complied with all the requirements for approval of a Course or Test, the Program will notify the Provider by correspondence setting forth the Courses and Tests that have not been approved, the legal and factual bases for the decision not to approve, and the applicable appeal rights of the Provider. The Program will furnish the USDVA with an official copy of the letter, attachments and any subsequent amendments. ()

02. Length of Time of Approval. Unless otherwise specified in the notice of approval, approval of a Course or Test is for an indefinite period of time. Continuing approval of a Course or Test is contingent upon the Provider maintaining compliance with Federal Law, these rules, and any conditions of approval specified in the notice of approval. The Program may require that requests for continued approval be submitted on an annual basis and accompanied by documentation supporting continued compliance with Federal Law and these rules. Providers must submit a new application to the Program for an approved Course or Test that is substantively revised or changed from the Course or Test approved by the Program. ()

061. -- 100. (RESERVED)

101. SUSPENSION OR WITHDRAWAL OF APPROVAL.

01. Suspension. If a Course or Test fails to meet the requirements for an approved Course or an approved Test established in Federal Law, these rules, or the notice of approval, the Program may suspend approval of the Course or Test. The Program will comply with the requirements for suspension set forth in Federal Law. ()

02. Withdrawal of Approval. The Program will withdraw approval of a Course or Test if a failure to meet the requirements for an approved Course or an approved Test established in Federal Law, these rules, or the notice of approval: ()

a. Has not been corrected at the time of the expiration date of a suspension period; or ()

b. Substantially deprives a student of the protection afforded by the approval process or is of such a nature that it cannot be corrected within a period of sixty (60) days. ()

03. Notices of Suspension or Withdrawal of Approval. Prior to the effective date of the suspension or withdrawal of approval, the Program will provide notice to the Provider of the suspension and its length or the withdrawal of approval, the legal and factual bases for the suspension or withdraw approval, and the applicable appeal rights of the provider. ()

102. -- 999. (RESERVED)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.03.01 - RULES GOVERNING GROUP INSURANCE

DOCKET NO. 38-0301-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 67-5226, 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) 67-5701 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 complete text of the proposed rule was published in the [September 7, 2011 Idaho Administrative Bulletin, Vol. 11-9, page 146 through 150.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cynthia Ness, Program Manager. 208-332-1865.

DATED this 25th day of November, 2011.

Cynthia Ness, Program Manager
Department of Administration/Office of Group Insurance
304 N.8th Street Room 432
Boise, Idaho 83720-0035
PO Box 83720
Phone 332-1865, fax332-1888

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2011**.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5701, 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 21, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To comply with Federal Law to raise State Employee and State Retirees dependent's eligibility age limits.

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

Compliance with deadline in amendments to governing law or federal programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of a need to do temporary rule making to comply with mandated federal law.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cynthia Ness 332-1865.

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, 2011.

DATED this July 6, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0301-1101

011. DEFINITIONS.

01. Child. Child includes a natural child, stepchild, adopted child or child in the process of adoption from the time placed with the eligible active employee or eligible retiree. The term also includes a child legally dependent upon the eligible active employee, the eligible active employee's spouse, the eligible retiree or the eligible retiree's spouse for support where a normal parent-child relationship exists with the expectation that the eligible active employee or eligible retiree will continue to rear that child to adulthood. The definition does not include a child where one or both of that child's natural parents live in the same household with the eligible active employee or eligible retiree, as a parent-child relationship is not deemed to exist even though the eligible active employee, eligible retiree or their spouses provide support. (3-29-10)

02. Date of Hire. The first day an individual begins work for the state or his employer. (3-29-10)

03. Director. The director of the Department of Administration. (3-29-10)

04. Eligible Active Employee. An officer or employee of a state agency, department or institution, including a state official, elected official or employee of another governmental entity which has contracted with the state of Idaho for group insurance coverage, who is working twenty (20) hours or more per week, and whose term of employment is expected to exceed five (5) consecutive months. (3-29-10)

05. Eligible Dependent of an Eligible Active Employee. An eligible dependent of an eligible active employee who is enrolled in group insurance, is a person who is any of the following: (3-29-10)

a. The spouse of an eligible active employee. (3-29-10)

b. ~~An unmarried~~ child ~~under up to~~ the age of twenty~~one~~ ~~six~~ (21~~6~~) of an eligible active employee or an eligible active employee's spouse, ~~unless the dependent child is eligible to enroll in their own employer based group coverage.~~ (3-29-10)()

~~**c.** An unmarried child under the age of twenty-five (25) who is legally dependent upon the eligible active employee or the eligible active employee's spouse for support where a normal parent-child relationship exists with the expectation that the eligible active employee will~~

~~continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible active employee's most recent United States Individual Income Tax return. (3-29-10)~~

06. Eligible Dependent of an Eligible Retiree. An eligible dependent of an eligible retiree who is enrolled in group insurance, is a person who is any of the following: (3-29-10)

a. The non-Medicare-eligible spouse of an eligible retiree. (3-29-10)

b. ~~An unmarried~~ child ~~under~~ up to the age of twenty ~~one -six~~ (216) of an eligible retiree or an eligible retiree's spouse, unless the dependent child is eligible to enroll in their own employer based group coverage. (3-29-10)()

~~**e.** An unmarried child under the age of twenty five (25) who is legally dependent upon the eligible retiree or the eligible retiree's spouse for support where a normal parent-child relationship exists with the expectation that the eligible retiree will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible retiree's most recent United States Individual Income Tax return. (3-29-10)~~

07. Eligible Retiree. A person who is any of the following: (3-29-10)

a. An officer or employee of a state agency, department or institution, including state and elected officials, who retired on or before June 30, 2009, and who is not Medicare eligible. (3-29-10)

b. An officer or employee of a state agency, department or institution, including state and elected officials, who meets all of the following: (3-29-10)

i. He retires after June 30, 2009, and retires directly from state employment. (3-29-10)

ii. He is not Medicare eligible. (3-29-10)

iii. He was hired on or before June 30, 2009, ~~or~~ and has at least twenty thousand eight hundred (20,800) credited state service hours on or before June 30, 2009, is reemployed, reelected or reappointed after June 30, 2009, and accrues an additional six thousand two hundred forty (6,240) continuous credited state service hours. (3-29-10)()

c. A person receiving benefits from a state of Idaho retirement system who has at least ~~ten (10) years or~~ twenty thousand eight hundred (20,800) credited state service hours in a state of Idaho retirement system, and who is not Medicare eligible. (3-29-10)()

08. Group Insurance. Medical, dental, vision, life, disability and other types of insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide such insurance to eligible active employees, eligible retirees and their dependents. (3-29-10)

09. Health Care Coverage. Medical insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide medical insurance to eligible

active employees, eligible retirees and their dependents. (3-29-10)

10. Medicare Coverage Gap. Under a Medicare-supplement plan, there is a gap in coverage for prescription medications between the initial coverage limit (two thousand seven hundred dollars (\$2,700) in 2009) and the catastrophic coverage threshold (four thousand three hundred fifty dollars (\$4,350) in 2009). Within this gap, the Medicare recipient pays one hundred percent (100%) of the cost of prescription medications before catastrophic coverage begins. (3-29-10)

11. Medicare Eligible. A person who is age sixty-five (65) or older and qualifies to receive Medicare. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

032. LOSS OF ELIGIBILITY.

01. Eligible Active Employee Separation. An eligible active employee and his dependents are no longer eligible for group insurance when the employee separates employment. An employee or former employee may be qualified to extend group insurance coverage after separation under provisions of federal and state law. (3-29-10)

02. ~~Unmarried Eligible Dependents—Child At or Over Age Twenty Five.~~ ~~An unmarried child under the age of twenty five (25) who is legally dependent upon the eligible active employee or eligible retiree for support where a normal parent-child relationship exists with the expectation that the eligible employee or eligible retiree will continue to rear that child to adulthood, and is eligible to be claimed as a dependent on the eligible active employee's or eligible retiree's most recent United States Individual Income Tax return, is no longer eligible for group insurance at the end of the calendar month the child becomes twenty five (25) years old. An Eligible Dependent loses coverage when he no longer meets eligibility requirements in Subsection 011.05 of this rule. Group insurance coverage will terminate on the last day of the month in which the child turns 26.~~ (3-29-10)()

03. Retiree Becomes Medicare Eligible. A retiree is no longer eligible for health care coverage when the retiree becomes Medicare eligible. A Medicare-eligible retiree's dependent spouse, who is not Medicare eligible, and eligible dependent children, remain eligible for health care coverage until the spouse becomes Medicare eligible. (3-29-10)

04. Retiree's Dependent Spouse Becomes Medicare Eligible. A retiree's dependent spouse and ~~other dependents~~ children are no longer eligible for health care coverage when the retiree's dependent spouse becomes Medicare eligible. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

040. MEDICARE PRESCRIPTION MEDICATION REIMBURSEMENT PROGRAM.

Effective January 1, 2010 through December 31, 201~~1~~³, any Medicare-eligible retiree or his Medicare-eligible dependent spouse, who is no longer eligible for health care coverage due to Medicare eligibility, may petition the director for reimbursement of prescription medications up to, but not to exceed, two thousand dollars (\$2,000) per calendar year, per Medicare-eligible retiree and per Medicare-eligible dependent spouse. (3-29-10)()

01. Eligibility for Medicare Prescription Medication Reimbursement. If an eligible retiree or his eligible dependent spouse meet the following conditions, he can request reimbursement for his respective out-of-pocket expenses for prescription medications. Each individual must meet all criteria each calendar year: (3-29-10)

a. The Medicare-eligible retiree or his Medicare-eligible dependent spouse has met or exceeded the initial Medicare coverage limit for prescription medication expenses under his Medicare-supplement plan. (3-29-10)

b. The Medicare-eligible retiree or his Medicare-eligible dependent spouse is in the Medicare coverage gap, and has paid two thousand dollars (\$2,000) or more out of pocket for prescription medications. (3-29-10)

c. The Medicare-eligible retiree's or his Medicare-eligible dependent spouse's total out-of-pocket prescription medication expenses have not exceeded the Medicare catastrophic coverage threshold. (3-29-10)

02. Deadline to Request Reimbursement from the Director. A Medicare-eligible retiree or his Medicare-eligible dependent spouse must submit a petition and a request for reimbursement to the director on or before March 31 of each year for the petition and request to be considered timely. (3-29-10)

a. All reimbursement requests for ~~2010~~ out-of-pocket prescription medication expenses must be received on or before March 31, ~~2011, and requests for 2011 out-of-pocket prescription medication expenses must be received on or before March 31, 2012,~~ of the following calendar year to be considered. Petitions and reimbursement requests received after March 31, ~~2011 (for 2010 expenses), and March 31, 2012 (for 2011 expenses),~~ of the covered year will be denied for being untimely. (3-29-10)()

03. Contents of the Petition and Reimbursement Requests. The Medicare-eligible retiree's or Medicare-eligible dependent spouse's petition and reimbursement request shall specifically state the reasons why the director should grant the Medicare-eligible retiree's or the Medicare-eligible dependent spouse's petition and reimbursement request, including but not limited to evidence that the petitioner has met all of the eligibility criteria above. (3-29-10)

a. Reimbursement requests must include all of the following information on an itemized receipt or statement: (3-29-10)

- i. Date of service. (3-29-10)
- ii. Description of prescription medication. (3-29-10)
- iii. Total amount of expenses. (3-29-10)
- iv. Patient name. (3-29-10)
- v. Any amount covered by other insurance, if applicable. (3-29-10)

04. Director's Review of the Petition and Reimbursement Request. The director shall review the petition and reimbursement request, and may ask for additional information or documentation from the petitioner to assist the director in reaching a decision on the petition and reimbursement request. (3-29-10)

05. Director's Decision of the Petition and Reimbursement Request. The director shall approve or deny the petition and reimbursement request, and shall provide reasons for any denial within ten (10) business days after receipt of the petition or the receipt of requested information or documentation, whichever is later. (3-29-10)

06. Appeal of Denial. A petitioner may appeal the director's denial within thirty (30) days of the denial. The appeal shall state the reasons why the director's decision is in error. The appeal shall be reviewed by the Group Insurance Advisory Committee within thirty (30) calendar days of receipt of the appeal. (3-29-10)

a. The Group Insurance Advisory Committee may review the appeal and make a decision on the basis of the information and documentation provided by the Medicare-eligible retiree or his Medicare-eligible dependent spouse, may request additional information or documentation, and may take written or oral testimony. (3-29-10)

b. The Group Insurance Advisory Committee shall issue a written decision on the Medicare-eligible retiree's or his Medicare-eligible dependent spouse's appeal within ninety (90) days of the date of the appeal. (3-29-10)

c. The Group Insurance Advisory Committee shall deny any appeal for any of the following reasons: (3-29-10)

- i. The individual is not Medicare eligible. (3-29-10)
- ii. The individual has not yet retired from state employment. (3-29-10)
- iii. The Medicare-eligible retiree or the Medicare-eligible dependent spouse has not met all of the criteria described in Subsection 040.01 of these rules. (3-29-10)
- iv. The appeal is untimely or the original petition was submitted untimely. (3-29-10)

07. Subsequent Reimbursement Requests After Approval of Petition. A Medicare-eligible retiree or his Medicare-eligible dependent spouse, whose petition for prescription

medication reimbursement has been approved by the director, may submit subsequent requests for reimbursement to the Office of Group Insurance, until the individual has received two thousand dollars (\$2000) for reimbursed prescription medication, per calendar year, under these rules.

(3-29-10)

08. Reimbursement Considered Taxable Income. Any reimbursed prescription medication expenses by and through these rules are considered taxable income to the reimbursed party.

(3-29-10)

IDAPA 45 - HUMAN RIGHTS COMMISSION

45.01.01 - RULES OF THE IDAHO HUMAN RIGHTS COMMISSION

DOCKET NO. 45-0101-1102

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. 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 Sections 67-5906(12) and 44-2704(2), Idaho Code, the Americans with Disabilities Act as amended, 42 USC 1201 et seq., and federal regulations at 29 CFR 1630.

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 complete text of the proposed rule was published in the [August 3, 2011, Idaho Administrative Bulletin, Vol. 11-8, pages 251 through 260.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Deputy Attorney General Jeanne T. Goodenough, 317 West Main Street, Boise, Idaho 83735-0660. Phone: (208) 223 2873 ext. 4229. Email: jeanne.goodenough@labor.idaho.gov.

DATED this 3rd day of November, 2011.

Jeanne T. Goodenough
Deputy Attorney General
Idaho Human Rights Commission
317 West Main Street
Boise, ID 83735-0660
(208) 334 2873 ext. 4229
FAX (208) 334 6125

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5906(12) and 44-2704(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 August 17, 2011.

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 Commission's rules have not been updated for several years. Non-substantive changes are being made to increase clarity, to eliminate unnecessary definitions, to replace references to "person" with "individual," and other minor wording improvements, as well as bring the rule into compliance with changes to federal law.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there are no substantive changes to the rules.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Deputy Attorney General Jeanne T. Goodenough, 317 West Main Street, Boise, Idaho 83735-0660. Phone: (208) 334 2873 ext. 4229. Email: jeanne.goodenough@labor.idaho.gov.

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 August 24,

2011.

DATED this 29th day of June, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 45-0101-1102

002. WRITTEN INTERPRETATIONS.

~~Explanations for rule changes are available for public inspection in the Office of the Human Rights Commission, 317 West Main Street, Boise, Idaho 83735-0660.~~ Brochures explaining various provisions of anti-discrimination laws are ~~also~~ available at the ~~address given above~~ office of the Idaho Human Rights Commission. (7-1-97)()

(BREAK IN CONTINUITY OF SECTIONS)

005. DECLARATORY RULINGS.

Any ~~person~~ individual who petition~~ing~~s for a declaratory ruling on the applicability of a statute or rule administered by the Human Rights Commission must substantially comply with this rule. The petition ~~shall~~ must be addressed to the Administrator and ~~shall~~ will: (7-1-93)()

01. Identification. Identify the petitioner and state the petitioner's interest in the matter; (7-1-93)

02. State Ruling. State the declaratory ruling that the petitioner seeks; and (7-1-93)

03. Other Rationale. ~~Indicate~~ Cite the statute, rule, or other controlling law and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)()

~~**04. Legal Assertions.** Legal assertions in the petition should be accompanied by citations of cases or statutory provisions.~~ (7-1-93)

006. OFFICE -- OFFICE HOURS -- ADDRESS -- RECORDS.

The office of the Idaho Human Rights Commission is located at 317 West Main Street, Boise, Idaho 83735-0660. The Commission's email address is inquiry@ihrc.idaho.gov. Office hours are from 8:00 a.m. to 5:00 p.m. Mountain Time, except Saturday, Sunday, and legal holidays. This is the office where all filings must be made and where records are kept. The Administrator of the agency is the custodian of records. (7-1-97)()

007. -- 009. (RESERVED)

010. DEFINITIONS.

~~**01. Administrator.** The Administrator appointed by the Commission pursuant to the~~

~~Human Rights Act. (7-1-93)~~

~~02. Commission. The Idaho Human Rights Commission as created by the Human Rights Act. (7-1-93)~~

~~03. Commissioner. A duly appointed member of the Idaho Human Rights Commission. (7-1-93)~~

01. Act. The Human Rights Commission Act, Section 67-5901, Idaho Code, et seq. ()

042. Complainant. Any *person* **individual** who files a complaint with the Commission pursuant to the *Human Rights Act*. (7-1-93)()

053. Complaint. A statement filed with the Commission pursuant to these ~~R~~**r**ules alleging an unlawful practice within the meaning of the *Human Rights Act*. The complaint may be in the form of a letter but, whenever *timely* possible, should be written on a complaint form provided by the Commission or on the complaint form used by the Equal Employment Opportunity Commission (**EEOC**), and signed by the Complainant ~~or their legal representative~~ **under penalty of perjury.** (7-1-97)()

~~06. Conciliation Agreement. A written agreement settling the issues raised by the complaint and signed by the parties after a determination on the merits of the complaint by the Commission. (7-1-93)~~

074. Covered Entity. Those *persons* **individuals** and organizations within the jurisdiction of the *Human Rights Act*, as set forth in Sections 65-5901 and 67-5902, Idaho Code. (7-1-98)()

~~08. Discriminatory Wage Act. The Act set forth in Title 44, Chapter 17, Idaho Code, "Discriminatory Wage Rates Based Upon Sex." (7-1-93)~~

095. E.E.O.C. The United States Equal Employment Opportunity Commission or any of its designated representatives. (7-1-93)()

~~10. Human Rights Act. As used herein, the term "Human Rights Act" shall mean the Human Rights Commission Act of 1969, as amended and codified as Title 67, Chapter 59, Idaho Code. (7-1-93)~~

~~11. Mental Condition. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. (7-1-93)~~

1206. Party or Parties. The Complainant, the Respondent, the Commission, and any other *person* **individual or entity** authorized by the Commission to intervene in any proceeding. (7-1-93)()

~~13. Physical Condition. Any physiological disorder, condition, cosmetic~~

~~disfigurement, anatomical loss, or abnormality affecting one (1) or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine.~~
(7-1-93)

~~**14. Record of Such a Disability.** A person may have “a record of such a disability” when he/she has a history of or has been misclassified as having a physical or mental condition that substantially limits one (1) or more major life activities.~~
(7-1-97)

~~**15. Regarded as Having Such a Disability.** A person may be “regarded as having such a disability” when he/she:~~
(7-1-97)

~~**a.** Has a physical or mental impairment that does not substantially limit a major life activity but is treated by a covered entity as constituting such a limitation;~~
(7-1-98)

~~**b.** Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or~~
(7-1-93)

~~**c.** Has none of the impairments listed above but is treated by a covered entity as having such an impairment.~~
(7-1-98)

~~**16. Religion.** All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.~~
(3-15-02)

~~**107. Respondent.** Any person The party against whom a complaint is filed in accordance with the Human Rights Act and these Rrules.~~
(7-1-93)()

~~**18. Settlement Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties prior to the Commission's making a determination on the merits of the complaint.~~
(7-1-93)

~~**19. Sex.** The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. Subsection 010.19 shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion. Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.~~
(3-15-02)

~~**20. Substantial Limitation.** A physical or mental condition constitutes a “substantial limitation” when a person is unable to perform a major life activity, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, that the average person in the general population can perform or is significantly restricted as to~~

~~the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. (3-15-02)~~

~~**a.** The following factors should be considered in determining whether a physical or mental condition constitutes a substantial limitation: (3-15-02)~~

~~i. The nature and severity of the impairment; (3-15-02)~~

~~ii. The duration or expected duration of the impairment; and (3-15-02)~~

~~iii. The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment. (3-15-02)~~

~~**b.** With respect to the major life activity of working, a physical or mental condition constitutes a “substantial limitation” when a person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. (3-15-02)~~

~~**c.** The following factors may be considered in determining whether a physical or mental condition constitutes a “substantial limitation” on the major life activity of “working”:
(3-15-02)~~

~~i. The geographical area to which the individual has reasonable access; (3-15-02)~~

~~ii. The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or (3-15-02)~~

~~iii. The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes). (3-15-02)~~

011. REPRESENTATION OF PARTIES.

In proceedings before the Commission, Complainants, Respondents, witnesses and any other ~~persons~~ **individuals or entities** authorized by the Commission to intervene must be represented as follows: (3-30-01)()

01. ~~Natural Person~~ **Individual.** An ~~natural person~~ **individual** must represent himself or herself or be represented by an attorney, or a family member. (3-30-01)()

02. **Partnership.** A partnership must be represented by a partner, a duly authorized employee, or an attorney. (3-30-01)

03. Corporation. A corporation must be represented by an officer, a duly authorized employee, or an attorney. (3-30-01)

04. Other Entity. A municipal corporation, state, federal, tribal, or local government agency, or entity, incorporated association, or non-profit organization must be represented by an officer, a duly authorized employee or an attorney. (3-30-01)

012. INTERPRETATION OF STATE LAW.

In evaluating allegations of discrimination on the basis of race, color, religion, sex or national origin under the Act, the Commission will rely on the interpretations of Title VII of the Civil Rights Act, 42 USC 2000e et seq. and federal regulations at 29 CFR Parts 1604 through 1607. The Commission will rely on interpretations of the Age Discrimination in Employment Act, 42 USC 621 et seq., and regulations at 29 CFR Part 1625 in determining allegations of age discrimination. ()

0123. -- 099. (RESERVED)

100. TEMPORARY ~~DISABILITIES~~ IMPAIRMENTS.

Minor illnesses or conditions which are only temporarily disabling will not be considered to be disabilities under this the aAct. ~~Examples of such conditions include, but are not limited to: broken bones, sprains, or colds.~~ (7-1-97)()

101. DISABILITIES.

The prohibition of discrimination on the basis of disability in the Act will be construed in compliance with the Americans with Disabilities Act as amended, 42 USC 1201 et seq. and federal regulations at 29 CFR Part 1630. ()

01. Contagious Diseases. ~~An person suffering from~~ individual who has a chronic contagious disease is an person individual with a disability if he/ ~~or~~ she meets the requirements of Section 67-5902(15), Idaho Code. That person individual is entitled to an individualized medical inquiry to determine if he/ ~~or~~ she is qualified for the job in question. Factors to be considered include the nature, duration and severity of the risk of infection, and the probability that the disease would be transmitted and would cause varying degrees of harm. (7-1-97)()

02. Alcoholism. Alcoholism is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) Whenever alcoholism includes current use of alcohol, an employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

03. Drug Addiction. Drug addiction is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) No accommodation is necessary for drug addiction ~~which that~~ includes current illegal use, possession, or selling of a controlled substance. An employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)()

04. Reasonable Accommodations. Reasonable accommodations are adjustments or

modifications to the work assignment or work environment to enable ~~an person~~ individual with a disability to fulfill employment responsibilities. They may include, but are not limited to:

(7-1-97)()

a. Making the worksite accessible to and usable by ~~persons~~ individuals with a disability; (7-1-97)()

b. Modification of equipment or tools so they can be used by ~~an person~~ individual with a disability; (7-1-97)()

c. Job restructuring; (7-1-93)

d. Modified work schedules, particularly as they may be necessary for the ~~person~~ individual to receive treatment for a disability; (7-1-93)()

e. Acquisition of adaptive aids or devices; (7-1-93)

f. Reassignment to a vacant position. (7-1-93)

05. Accommodations of a Personal Nature. Employers ~~shall are~~ not ~~be~~ required to provide accommodations of a personal nature, such as wheelchairs and hearing aids; ~~And~~ ~~or shall~~ are they ~~be~~ required to hire two (2) full-time employees to fill one (1) position. (7-1-93)()

06. Cooperation. ~~An person~~ individual with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the “best” accommodation or the one most desired by the employee or applicant. The determination of “reasonableness” will be made on a case- by-case basis. (7-1-97)()

07. Pre-Employment Inquiry. An employer, labor organization, or employment agency ~~shall may~~ not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment, ~~or as to~~ the nature or severity of such impairment, ~~or a worker’s compensation claim~~. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (7-1-93)()

102. -- 199. (RESERVED)

200. MEDICAL ISSUES.

01. Medical Examinations and Inquiries. Medical examinations and inquiries are permitted as follows: (7-1-97)

a. A covered entity may require a medical examination or inquiry after making an offer of employment to an applicant and before he/ ~~or~~ she begins employment duties, and may condition an offer of employment on the results of such examination or inquiry, if all entering employees in the same job category are subjected to such an examination or inquiry regardless of

disability. Medical inquiries or examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. If certain criteria are used to screen out an applicant, however, the exclusionary criteria must be job-related and consistent with business necessity. (7-1-97)()

b. A covered entity may require a medical examination or make an inquiry of an employee that is job-related and consistent with business necessity. Inquiries may be made into the ability of an employee to perform job-related functions. (7-1-93)

c. A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program. (7-1-93)

02. Disabilities Not Presently Job-Related. An employer ~~shall~~ **may** not discriminate against an applicant or employee because of a disability ~~which that~~ is not presently job-related but ~~which that~~ may worsen and become job-related in the future. (3-30-01)()

03. Confidentiality, Exceptions. Information about the medical condition or history of an applicant or employee should be considered confidential except that: (7-1-93)

a. Supervisors and managers may be informed regarding restrictions on the work or duties of ~~persons~~ **individuals** with a disability and regarding any accommodations or health or safety precautions; ~~and~~ (7-1-97)()

b. First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; ~~and~~. (7-1-93)()

~~**c.** Enforcement agencies shall be provided relevant information upon request when investigating complaints under state or federal law. (7-1-93)~~

201. -- 299. (RESERVED)

300. COMPLAINTS.

01. Who May File. A complaint may be filed by any of the following: (7-1-93)

a. ~~Any person~~ **individual** for himself/ or herself, ~~or also on behalf of himself/herself and other similarly situated individuals~~ **a family member on behalf of a minor, or an individual with guardianship, power of attorney, or similar legal authority over another, who** claimings to be aggrieved by an alleged unlawful discriminatory practice as defined in the Act; (7-1-97)()

b. A Commissioner or ~~the~~ **Administrator** **may** request~~ing~~ the Commission to initiate a complaint, ~~provided he/she has sufficient reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring. Upon such request~~ **The Commission shall will** review the reasons provided by the initiating Commissioner or Administrator and may initiate a complaint if satisfied that there is reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring; (7-1-97)()

c. ~~Any person~~ **individual who** claimings that he/ or she has been discharged,

expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because he/ ~~or~~ she opposed practices forbidden under the ~~Human Rights~~ Act, or because he/ ~~or~~ she has filed a complaint, testified, assisted or participated in any manner in an investigation, hearing or other procedure before the Commission. (7-1-97)()

02. Commission Assistance. Assistance in filing complaints ~~shall~~ will be available to any Complainant by a Commissioner, the Administrator, or staff member. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Administrator, there is no reason to suspect that illegal discrimination may have occurred, or if the action is barred by the terms of Subsection 300.06.a. (7-1-97)()

03. Contents of Complaint. A complaint should contain the following: (7-1-93)

a. The full name, mailing address, and telephone number (if any) of the Complainant or Complainants; (7-1-93)

b. The full name, mailing address, and telephone number (if any and if known) of the Respondent or Respondents; (7-1-93)

c. A brief written statement sufficiently clear to identify the practices and to describe generally the action or practice alleged to be unlawful; (7-1-98)

d. The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

e. A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint. (7-1-93)

04. Medical Documentation. ~~Persons~~ Individuals filing disability discrimination complaints may be required to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Medical reports from the following sources will be accepted: physicians and osteopathic physicians, nurse practitioners, counselors, psychologists, occupational therapists, clinical social workers, dentists, audiologists, speech pathologists, podiatrists, optometrists, chiropractors, physical therapists, and substance abuse treatment providers, insofar as any opinion or evaluation within the scope of the relevant license applies to the individual's physical or mental impairment. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (7-1-97)()

05. Method of Filing. A complaint may be filed ~~by~~ by personal delivery, mail, email, or facsimile delivered to the Commission office in Boise. (7-1-97)()

06. Time for Filing. The following time limitations apply to the filing of complaints with the Commission: (7-1-93)

a. A complaint must be filed within one (1) year after the alleged unlawful practice occurs. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said

unlawful practice ~~shall~~ **will** be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint ~~shall have been~~ **is** filed if the alleged unlawful practice continues. (7-1-93)()

b. ~~Upon receipt of~~ **The date** a complaint **is received** at the Commission's office, ~~the date of such receipt shall~~ **will** be noted ~~there~~ on **the complaint**. For purposes of compliance with Section 67-5908(4), Idaho Code, the date of notation ~~shall~~ **will** be the date of filing. (7-1-93)()

c. Notwithstanding any other provisions of these rules, a complaint ~~shall~~ **will** be deemed to have met the timelines requirement of Subsection 300.06.a. when the Commission receives, in any manner described in Subsection 300.05.a., a written statement sufficiently precise to identify the practices and to describe generally the action or practice alleged to be unlawful. (7-1-97)()

07. Complaints Deferred by E.E.O.C. Any complaint deferred to the Commission by the E.E.O.C. ~~shall~~ **will** be treated, for purposes of filing requirements, according to the rules ~~as~~ stated above. (7-1-93)()

08. Amended Complaints. A complaint may be amended, before the determination by the Commission and at the discretion of the Administrator, to cure technical defects or omissions, or to clarify ~~and/or~~ amplify allegations by the Complainant. (7-1-97)()

09. Supplemental Complaint. The Complainant may file a supplemental complaint setting forth actions ~~which that~~ have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (7-1-93)()

10. Withdrawal of Complaint. Upon the request of the Complainant, on a form provided by the Administrator stating the reasons for such request, a complaint, or any part thereof, may be withdrawn ~~upon~~ **with** the written consent of the Administrator. If a complaint is withdrawn pursuant to the provision of these rules, the Administrator ~~shall~~ **will** close the case and notify the parties. (7-1-93)()

11. Initial Actions. ~~Upon the filing of a complaint~~ **When filed**, ~~said a~~ complaint ~~shall~~ **will** be docketed, assigned a complaint number, and assigned to the staff for ~~settlement mediation~~ or investigation ~~and conciliation~~. (7-1-93)()

12. Service on Respondent. As promptly as possible, the Commission ~~shall cause~~ **will serve** a copy of ~~said the~~ complaint ~~to be served~~ on the Respondent by: (5-3-03)()

- a. Personal delivery; (5-3-03)
- b. Mail; ~~or~~ (5-3-03)()
- c. Email; or ()

ed. Facsimile. (5-3-03)

13. Mediation. Upon the filing of a complaint, the Commission or its delegated staff member ~~shall~~ **will** endeavor to resolve the matter by informal means. Such informal means may include, at the discretion of the Commission staff, ~~the holding of~~ a mediation conference at a time and place acceptable to all participants; ~~if held, a mediation conference shall be for the purposes of to~~ clarifying the positions of the parties to the complaint and ~~of exploring~~ any bases for no-fault settlement. A mediation conference is not, ~~and shall not be considered for any purposes to be,~~ a contested case hearing under Section 67-5209, Idaho Code. (7-1-97)()

14. Settlement. ~~If~~ Terms of **any** settlement ~~are~~ agreed to by the parties at any time prior to a determination by the Commission ~~as to~~ **on** the merits of the charge, ~~said terms shall will~~ be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Administrator will ~~cause the case to be~~ closed **the case**. (7-1-93)()

15. Answers. The Respondent ~~shall~~ **must** answer or otherwise respond to the complaint in writing within thirty (30) days of receiving it. A copy of ~~said~~ **Respondent's** answer, including any attachments ~~thereto~~ **submitted**, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause ~~shown~~ extend the time within which the answer may be filed. The answer ~~shall~~ **must** be fully responsive to each allegation contained in the complaint. Any allegation in the complaint ~~which that~~ is not denied or admitted in the answer ~~shall will~~ be deemed admitted unless the Respondent ~~shall~~ states in the answer ~~he/she that~~ **Respondent** is without knowledge or information sufficient to form a belief. If the Respondent fails to answer or otherwise respond to the complaint within thirty (30) days of receipt or such time as may be extended by the Commission, the Commission may act on the complaint based on the information provided by the Complainant. Upon application, the Commission may for good cause shown permit the Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, ~~shall will~~ be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, ~~shall~~ **must** be submitted within ten (10) working days. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause ~~shown~~. (7-1-97)()

16. Interrogatories Requests for Information. At any time after the filing of a complaint, the Commission staff may issue to either the Complainant or the Respondent ~~interrogatories~~ **requests for information** regarding any matter; ~~that is~~ not privileged, ~~which and that~~ is relevant to the subject matter involved. ~~It is not ground for objection that the information sought will be inadmissible in court if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~ (7-1-93)()

17. Interrogatory Answers Returned. Answers to ~~the interrogatories~~ **requests for information** ~~shall~~ **must** be returned to the Commission office ~~within thirty (30) days from the date of service of said interrogatories~~ **at a time determined by the investigator**. (7-1-93)()

~~**18. Extension.** Upon application by a party, for good cause shown, the Administrator may grant one (1) extension of time for filing answers to interrogatories, said extension not to exceed an additional fifteen (15) days.~~ (7-1-93)

~~19. **Orders.** In the event that a party objects to certain interrogatories, and after an attempt has been made to resolve any difference between the Commission and the party, the Commission may issue an order compelling the party to answer the interrogatories. This order must be signed by at least two (2) Commissioners. An order issued under this rule shall be enforceable by application to the District Court. (7-1-93)~~

~~2018. **Narrative Statement.** The Commission staff may, in specific cases, seek from a party request a narrative statement of response in addition to or rather than answers to interrogatories from a party. In such cases, the narrative statement should must include all information which that the party desires to be considered by the Commission, in determining whether to credit the allegations of the complaint. (7-1-93)()~~

~~219. **File Briefs.** Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law. (7-1-97)~~

~~220. **Summary of Investigation.** At the completion of the investigation, the staff member to whom the case is assigned shall will prepare a report containing a summary of the investigation and submit it to the Administrator to review. (7-1-93)()~~

~~231. **Administrative Closure.** At any point during the handling of a particular case, the Administrator may close the case for administrative reasons. Such reasons shall that include, but are not limited to: (7-1-99)()~~

- ~~a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)~~
- ~~b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories requests for information or failure to provide medical information as requested; (7-1-93)()~~
- ~~c. Inability to locate the Complainant; (7-1-93)~~
- ~~d. It appearing upon investigation that the case is not jurisdictional within the jurisdiction of the Commission; (7-1-93)()~~
- ~~e. The Complainant's filing of a suit in either state or federal court alleging the same unlawful practices as complained of to the Commission. (7-1-93)()~~

~~242. **Notification of Closure.** The Administrator shall will notify the parties of such an administrative closure, including the grounds therefor the decision, as promptly as possible. (7-1-93)()~~

~~253. **Decision on the Merits.** At the completion of the investigation and approval of the summary by the Administrator, the Commission or a designated panel of at least three (3) Commissioners shall will determine whether there is probable cause to believe that the Respondent has been or continues to be engaged in any unlawful discriminatory practices defined in the Act. (7-1-93)()~~

~~264. **No Probable Cause.** If the Commission or designated panel finds no probable~~

cause ~~to credit on~~ the allegations of the complaint, a statement of no probable cause and order of dismissal will be issued for the Commission by the Administrator. The summary of investigation, statement, and order ~~shall will~~ be sent to Complainant and Respondent, thereby closing the case.

(5-3-03)()

275. Probable Cause. If the Commission or designated panel finds probable cause ~~to credit on~~ the allegations of the complaint, a statement of probable cause ~~shall will~~ be issued. The summary of investigation and statement ~~shall will~~ be sent to the Complainant and the Respondent.

(5-3-03)()

286. Conciliation. If the Commission finds probable cause ~~to credit on~~ the allegations of the complaint, the Commission staff ~~shall will~~ endeavor through conference with the parties to redress and eliminate the possible unlawful discriminatory practice by conciliation.

(7-1-93)()

297. Conciliation Agreement. If ~~the commission staff shall succeed in endeavors to conciliate~~ conciliation is successful, a written Conciliation Agreement ~~shall will~~ be prepared, ~~which shall set forth that states~~ all measures to be taken by any party, and if appropriate, compliance provisions. The Conciliation Agreement ~~shall must~~ be signed by the parties, and the Administrator ~~shall cause the will close the case to be closed~~.

(7-1-93)()

3028. Failure of Agreement. ~~In the event of~~ If the parties ~~failure~~ to reach terms of conciliation, ~~agreeable to all parties, the Administrator shall so certify and assign the case to the Commission's legal counsel. The~~ Commission, ~~after review by its legal counsel, shall will~~ determine whether or not to pursue the case in the District Court.

(7-1-93)()

3129. No Action. If the Commission determines not to pursue the case in District Court, the Administrator ~~shall so will~~ notify Complainant and Respondent, close the case, and advise Complainant of his or her right to pursue the case through a private cause of action.

(7-1-93)()

320. Action. If the Commission decides to pursue a case, it ~~shall direct its legal counsel to will~~ file an action in District Court in the name of the Commission ~~for the use on behalf~~ of the ~~person or persons alleging discrimination~~ Complainant.

(7-1-93)()

331. Confidentiality of Records. ~~In order to protect the interests of all parties in reaching successful settlements of discrimination charges without resorting to court action, The records of the Commission are confidential according to Section 9-340B(8), Idaho Code. The~~ Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation ~~or to cooperate with other government law enforcement agencies~~.

(7-1-93)()

34. Federal Compliance. ~~In the interest of consistency and to avoid confusion on the part of persons governed by both the State and Federal anti-discrimination laws, the Commission will generally follow the interpretations of the Federal anti-discrimination laws in examining the merits of a complaint filed with it under this Act. If a person files a complaint under Title 67, Chapter 59, Idaho Code, and Title 44, Chapter 17, Idaho Code, the Commission will attempt to avoid duplication in investigation and settlement efforts, whenever possible.~~

(7-1-97)

352. Document Destruction. The Commission ~~will~~ may retain closed investigatory files for three (3) years from the date of closure at which time these documents may ~~be~~ destroyed at the discretion of the Administrator. ~~(7-1-97)~~()

363. Notice of Right to Sue. At the time of case closure, the Administrator will issue a notice of administrative dismissal notifying the ~~e~~Complainant of his or her right to file a civil action in District Court. Any such suit must be filed within ninety (90) days of the date of this notice. ~~(7-1-99)~~()

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - PERSI RETIREMENT RULES

DOCKET NO. 59-0106-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective February 1, 2011, 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 Sections 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 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:

Update rule 162 to adopt new contingent annuitant factors (Table C) for members who retire on or after July 1, 2011.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [May 4, 2011, Idaho Administrative Bulletin, Vol. 11-5, pages 101 through 109.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 27th day of May, 2011.

Don Drum, Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230; Fax: 208-334-3408

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 59-1314(1) and 72-1405, 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 May 18, 2011.

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:

Update rule 162 to adopt new contingent annuitant factors (Table C) for members who retire on or after July 1, 2011.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, PERSI, 287-9271.

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 May 25, 2011.

DATED this 7th day of April, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0106-1101

162. ACTUARIAL ASSUMPTION TABLES (RULE 162).

The actuarial tables used for determining optional and early retirement benefits are as follows:

TABLE A -- Page 1
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
If the date of last contribution is prior to 10/1/92

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.770	.690	.610	.530	.450
1	.998	.968	.938	.908	.878	.843	.763	.683	.603	.523	
2	.995	.965	.935	.905	.875	.837	.757	.677	.597	.517	
3	.993	.963	.933	.903	.873	.830	.750	.670	.590	.510	
4	.990	.960	.930	.900	.870	.823	.743	.663	.583	.503	
5	.988	.958	.928	.898	.868	.817	.737	.657	.577	.497	
6	.985	.955	.925	.895	.865	.810	.730	.650	.570	.490	
7	.983	.953	.923	.893	.863	.803	.723	.643	.563	.483	
8	.980	.950	.920	.890	.860	.797	.717	.637	.557	.477	
9	.978	.948	.918	.888	.858	.790	.710	.630	.550	.470	
10	.975	.945	.915	.885	.855	.783	.703	.623	.543	.463	
11	.973	.943	.913	.883	.853	.777	.697	.617	.537	.457	

First sixty months reduction: .2500% Next sixty months reduction: 0.6667% (1-1-94)

TABLE A -- Page 2
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
If the date of last contribution is on or after 10/1/92 but prior to 10/1/93

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.777	.705	.632	.560	.487
1	.998	.968	.938	.908	.878	.844	.771	.699	.626	.554	
2	.995	.965	.935	.905	.875	.838	.765	.693	.620	.548	
3	.993	.963	.933	.903	.873	.832	.759	.687	.614	.542	
4	.990	.960	.930	.900	.870	.826	.753	.681	.608	.536	
5	.988	.958	.928	.898	.868	.820	.747	.675	.602	.530	
6	.985	.955	.925	.895	.865	.814	.741	.669	.596	.524	
7	.983	.953	.923	.893	.863	.808	.735	.663	.590	.518	
8	.980	.950	.920	.890	.860	.802	.729	.657	.584	.512	

Months	Years									
9	.978	.948	.918	.888	.858	.796	.723	.651	.578	.506
10	.975	.945	.915	.885	.855	.790	.717	.645	.572	.500
11	.973	.943	.913	.883	.853	.784	.711	.639	.566	.494

First sixty months reduction: 0.2500% Next sixty months reduction: 0.6042% (3-20-97)

TABLE A -- Page 3
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
If the date of last contribution is on or after 10/1/93 but prior to 10/1/94

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.785	.720	.655	.590	.525
1	.998	.968	.938	.908	.878	.845	.780	.715	.650	.585	
2	.995	.965	.935	.905	.875	.839	.774	.709	.644	.579	
3	.993	.963	.933	.903	.873	.834	.769	.704	.639	.574	
4	.990	.960	.930	.900	.870	.828	.763	.698	.633	.568	
5	.988	.958	.928	.898	.868	.823	.758	.693	.628	.563	
6	.985	.955	.925	.895	.865	.817	.752	.687	.622	.557	
7	.983	.953	.923	.893	.863	.812	.747	.682	.617	.552	
8	.980	.950	.920	.890	.860	.807	.742	.677	.612	.547	
9	.978	.948	.918	.888	.858	.801	.736	.671	.606	.541	
10	.975	.945	.915	.885	.855	.796	.731	.666	.601	.536	
11	.973	.943	.913	.883	.853	.790	.725	.660	.595	.530	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.5417% (3-20-97)

TABLE A -- Page 4
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
Date of last contribution is on or after 10/1/94 or later

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.0	.970	.940	.910	.880	.850	.792	.735	.677	.620	.562
1	.998	.968	.938	.908	.878	.845	.788	.730	.673	.615	
2	.995	.965	.935	.905	.875	.840	.783	.725	.668	.610	

Months	Years									
3	.993	.963	.933	.903	.873	.836	.778	.721	.663	.606
4	.990	.960	.930	.900	.870	.831	.773	.716	.658	.601
5	.988	.958	.928	.898	.868	.826	.769	.711	.654	.596
6	.985	.955	.925	.895	.865	.821	.764	.706	.649	.591
7	.983	.953	.923	.893	.863	.816	.759	.701	.644	.586
8	.980	.950	.920	.890	.860	.812	.754	.697	.639	.582
9	.978	.948	.918	.888	.858	.807	.749	.692	.634	.577
10	.975	.945	.915	.885	.855	.802	.745	.687	.630	.572
11	.973	.943	.913	.883	.853	.797	.740	.682	.625	.567

(3-20-97)

TABLE B -- Page 1
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH
BENEFITS

Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age
Death Benefits: Additional Years and Months Until Member Would Qualify
for an Unreduced Service Retirement Allowance
AFTER Applying Table A factors

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.923	.853	.787	.727	.671	.620	.572	.528	.488	.451
1	.993	.917	.847	.782	.722	.667	.616	.568	.525	.485	
2	.987	.911	.841	.777	.717	.662	.612	.565	.521	.481	
3	.980	.905	.836	.772	.713	.658	.608	.561	.518	.478	
4	.974	.899	.830	.767	.708	.654	.604	.557	.515	.475	
5	.967	.893	.825	.762	.703	.649	.600	.554	.511	.472	
6	.961	.887	.819	.756	.699	.645	.596	.550	.508	.469	
7	.955	.881	.814	.751	.694	.641	.592	.546	.504	.466	
8	.948	.876	.808	.746	.689	.636	.588	.543	.501	.463	
9	.942	.870	.803	.742	.685	.632	.584	.539	.498	.460	
10	.936	.864	.798	.737	.680	.628	.580	.535	.494	.457	
11	.930	.858	.793	.732	.676	.624	.576	.532	.491	.454	

(1-1-94)

TABLE B -- Page 2
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS

*Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age
 Death Benefits: Additional Years and Months Until Member Would Qualify
 for an Unreduced Service Retirement Allowance
 AFTER Applying Table A factors*

Months	Years										
	10	11	12	13	14	15	16	17	18	19	20
0	.451	.416	.384	.355	.327	.302	.279	.258	.238	.220	.203
1	.448	.413	.382	.352	.325	.300	.277	.256	.236	.218	
2	.445	.411	.379	.350	.323	.298	.276	.254	.235	.217	
3	.442	.408	.377	.348	.321	.296	.274	.253	.233	.215	
4	.439	.405	.374	.345	.319	.294	.272	.251	.232	.214	
5	.436	.402	.372	.343	.317	.293	.270	.249	.230	.213	
6	.433	.400	.369	.341	.315	.291	.268	.248	.229	.211	
7	.430	.397	.367	.339	.313	.289	.267	.246	.227	.210	
8	.427	.394	.364	.336	.311	.287	.265	.244	.226	.208	
9	.424	.392	.362	.334	.308	.285	.263	.243	.224	.207	
10	.422	.389	.359	.332	.306	.283	.261	.241	.223	.206	
11	.419	.387	.357	.330	.304	.281	.260	.240	.221	.204	

(1-1-94)

TABLE B -- Page 3
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS

*Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age
 Death Benefits: Additional Years and Months Until Member Would Qualify
 for an Unreduced Service Retirement Allowance
 AFTER Applying Table A Factors*

Months	Years					
	20	21	22	23	24	25
0	.203	.187	.173	.160	.148	.136
1	.202	.186	.172	.159	.147	.135
2	.200	.185	.171	.158	.146	.134
3	.199	.184	.170	.157	.145	.134
4	.198	.183	.169	.156	.144	.133

	Months		Years				
5	.196	.181	.167	.155	.143	.132	
6	.195	.180	.166	.154	.142	.131	
7	.194	.179	.165	.153	.141	.130	
8	.192	.178	.164	.152	.140	.129	
9	.191	.177	.163	.151	.139	.128	
10	.190	.175	.162	.150	.138	.127	
11	.189	.174	.161	.149	.137	.127	

(1-1-94)

TABLE C -- Page 1
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
CONTINGENT ANNUITANT FACTORS
For persons retiring before July 1, 1995

	Age Difference in Years	Factors	
		Option 1	Option 2
	15 *	0.600	0.750
	14	0.610	0.758
	13	0.621	0.766
	12	0.631	0.775
	11	0.642	0.782
Member	10	0.652	0.789
Older	9	0.663	0.797
Than	8	0.674	0.804
Contingent Annuitant	7	0.685	0.812
	6	0.697	0.821
	5	0.708	0.830
	4	0.720	0.838
	3	0.732	0.846
	2	0.746	0.855
	1	0.762	0.865
	0	0.780	0.876
	1	0.799	0.887
	2	0.823	0.902

Age Difference in Years		Factors	
	3	0.836	0.910
	4	0.847	0.918
	5	0.856	0.924
Member	6	0.865	0.930
Younger	7	0.873	0.935
Than	8	0.881	0.940
Contingent Annuitant	9	0.888	0.944
	10	0.897	0.949
	11	0.906	0.955
	12	0.916	0.961
	13	0.926	0.967
	14	0.934	0.969
	15 or more	0.940	0.970

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. (4-7-11)

TABLE C -- Page 2
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
CONTINGENT ANNUITANT FACTORS
For persons retiring on or after July 1, 1995

Age Difference in Years		Factors	
		Option 1	Option 2
	15 *	0.690	0.810
	14	0.700	0.816
	13	0.710	0.822
	12	0.720	0.828
	11	0.730	0.834
Member	10	0.735	0.840
Older	9	0.740	0.846
Than	8	0.745	0.852
Contingent Annuitant	7	0.750	0.858
	6	0.755	0.864
	5	0.760	0.870
	4	0.765	0.876
	3	0.770	0.882

	Age Difference in Years	Factors	
	2	0.785	0.888
	1	0.800	0.894
	0	0.815	0.900
	1	0.835	0.915
	2	0.855	0.925
	3	0.875	0.935
	4	0.890	0.945
	5	0.900	0.950
Member	6	0.910	0.955
Younger	7	0.920	0.960
Than	8	0.930	0.965
Contingent Annuitant	9	0.940	0.967
	10	0.944	0.969
	11	0.946	0.971
	12	0.948	0.973
	13	0.950	0.975
	14	0.952	0.977
	15 or more	0.954	0.979

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. (Amended 96) (4-7-11)

TABLE C -- Page 3
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
CONTINGENT ANNUITANT FACTORS
For persons retiring on or after July 1, 2011

Age Difference in Years	Factors	
	Option 1	Option 2
<u>15 *</u>	<u>0.729</u>	<u>0.851</u>
<u>14</u>	<u>0.736</u>	<u>0.856</u>
<u>13</u>	<u>0.743</u>	<u>0.861</u>
<u>12</u>	<u>0.750</u>	<u>0.866</u>

	<u>Age Difference in Years</u>	<u>Factors</u>	
	<u>11</u>	<u>0.757</u>	<u>0.871</u>
<u>Member</u>	<u>10</u>	<u>0.764</u>	<u>0.876</u>
<u>Older</u>	<u>9</u>	<u>0.771</u>	<u>0.881</u>
<u>Than</u>	<u>8</u>	<u>0.778</u>	<u>0.886</u>
<u>Contingent Annuitant</u>	<u>7</u>	<u>0.785</u>	<u>0.891</u>
	<u>6</u>	<u>0.792</u>	<u>0.896</u>
	<u>5</u>	<u>0.799</u>	<u>0.902</u>
	<u>4</u>	<u>0.808</u>	<u>0.908</u>
	<u>3</u>	<u>0.818</u>	<u>0.914</u>
	<u>2</u>	<u>0.833</u>	<u>0.920</u>
	<u>1</u>	<u>0.848</u>	<u>0.926</u>
	<u>0</u>	<u>0.863</u>	<u>0.932</u>
	<u>1</u>	<u>0.875</u>	<u>0.938</u>
	<u>2</u>	<u>0.887</u>	<u>0.944</u>
	<u>3</u>	<u>0.895</u>	<u>0.949</u>
	<u>4</u>	<u>0.902</u>	<u>0.954</u>
	<u>5</u>	<u>0.909</u>	<u>0.959</u>
<u>Member</u>	<u>6</u>	<u>0.916</u>	<u>0.963</u>
<u>Younger</u>	<u>7</u>	<u>0.923</u>	<u>0.966</u>
<u>Than</u>	<u>8</u>	<u>0.930</u>	<u>0.968</u>
<u>Contingent Annuitant</u>	<u>9</u>	<u>0.940</u>	<u>0.970</u>
	<u>10</u>	<u>0.944</u>	<u>0.972</u>
	<u>11</u>	<u>0.946</u>	<u>0.974</u>
	<u>12</u>	<u>0.948</u>	<u>0.976</u>
	<u>13</u>	<u>0.950</u>	<u>0.978</u>
	<u>14</u>	<u>0.952</u>	<u>0.980</u>
	<u>15 or more</u>	<u>0.954</u>	<u>0.982</u>

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .01 from the factor for Option 2. ()

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - PERSI RETIREMENT RULES

DOCKET NO. 59-0106-1102

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective March 1, 2011, 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 Sections 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 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.

To cancel scheduled increase in contribution rates to the unused sick leave fund by public schools and to maintain at current rates.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [May 4, 2011, Idaho Administrative Bulletin, Vol. 11-5, pages 110 and 111.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 27th day of May, 2011.

Don Drum, Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230; Fax: 208-334-3408

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, 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 May 18, 2011.

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

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

To cancel scheduled increase in contribution rates to the unused sick leave fund by public schools and to maintain at current rates.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, PERSI, 287-9271.

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 May 25, 2011.

DATED this 7th day of April, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0106-1102

552. SICK LEAVE FUNDING RATES (RULE 552).

The sick leave pools shall be funded by employer contributions as follows: (3-30-01)

01. State Agencies and Junior College Districts. All employer groups participating in the pools established by Sections 33-2109A and 67-5333, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. (3-29-10)

02. Schools. All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute the percentage of employee covered payroll based on the number of days of paid sick leave permitted during the contract year for certified teachers as set forth in the following table:

Beginning:	July 1, 2006	July 1, 2007	July 1, 2008
9-10 days	1.16%	1.18%	1.21%
11-14 days	1.26%	1.35%	1.44%
More than 14 days	Individual rate to be set by the Retirement Board based on current cost and actuarial data and reviewed annually		

Where a four (4) day work week or similar policies have been adopted, adjustments shall be made to convert the number of days of paid sick leave to the contribution level necessary to maintain equity within the pool. (Amended 3-30-01)(~~Amended 4-11-06~~). (~~4-11-06~~)()

03. Subdivisions. All employer groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Rule 578. (3-30-01)