

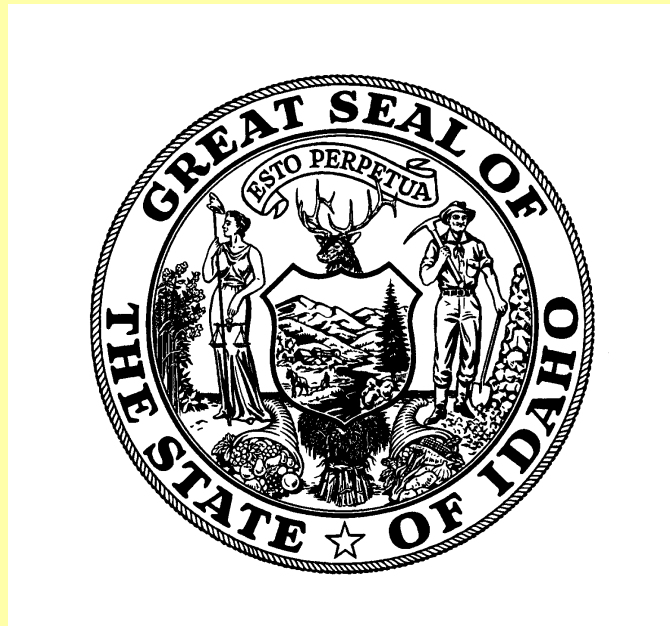
# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

Submitted for Review Before  
**House Commerce &  
Human Resources Committee**

**63rd Idaho Legislature  
Second Regular Session**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2016*

**HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**2016 Legislative Session**

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**IDAPA 09 - DEPARTMENT OF LABOR**

**09.01.06 - RULES OF THE APPEALS BUREAU**

**DOCKET NO. 09-0106-1501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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:

The rule will allow the Department to send notices of hearing to interested parties by mail or by electronic transmission. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9, pages 64 through 66](#).

**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 or to any dedicated fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Amy Hohnstein Chief Appeals Bureau (208) 332-3752 ext. 3330.

DATED this October 1, 2015.

Amy Hohnstein  
Chief Appeals Bureau  
Department of Labor  
317 West Main Street  
Boise, ID 83735  
(208) 332-3752 ext. 3330  
(208) 334-6125 Fax  
[amy.hohnstein@labor.idaho.gov](mailto:amy.hohnstein@labor.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 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 September 16, 2015.

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

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

The proposed rule will allow the Department to send notices of hearing to interested parties by mail or by electronic transmission.

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

**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:

There will be no fiscal impact to the General fund or to any dedicated fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7 page 37](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Amy Hohnstein Chief Appeals Bureau (208) 332-3752 ext. 3330.

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 23, 2015.

DATED this 20th Day of July, 2015.

### **LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0106-1501**

**026. CONDUCT OF HEARING.**

Upon request for appeal, a hearing shall be set and written notice of the time and place of hearing shall be mailed or electronically transmitted to each interested party not less than seven (7) days prior to the hearing date.

~~(+2-08)~~( )

**01. Telephone Hearings.** Hearings will be held by telephone unless, in the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the

appeals examiner shall consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (3-19-99)

**02. Continuance.** The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may order the dismissal of an appeal for good cause, such as abandonment of the appeal. (3-19-99)

**03. Rehearing.** An application for rehearing shall be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-19-99)

**04. No Appearance Hearings.** If no party appears to present additional evidence, a decision may then be based on the existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which have been provided to the parties with the notice of hearing. (4-11-06)

**05. Exhibits and Recordings.** The exhibits and recordings from a hearing may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (4-2-08)

**06. Subpoenas.** After determining that a subpoena of a witness or records is necessary and reasonable, the appeals examiner shall issue the subpoena, which may be served by mail or in person. (3-19-99)

**07. Failure to Respond to Subpoena.** If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing the available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (3-19-99)

**08. Witness Fees.** Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, shall be entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case shall a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses shall also be entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses shall be paid from the Employment Security Administration fund. Under no circumstances shall interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (4-5-00)

**09. Undecided Issues.** When it is apparent that there is no prior ruling on an issue which must be decided under the Act, the appeals examiner may hear and decide the issue. (3-19-99)

**10. Type of Hearing.** The proceeding before an appeals examiner will be a hearing "de novo" or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

**11. Role of Appeals Examiner.** The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

**12. Order of Witnesses.** The appeals examiner will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Therefore, as a general rule, the party who bears the burden of proof will be called to testify first. The appeals examiner will exercise reasonable discretion in directing the order, which must be flexible and dependent upon the particular circumstances of each case and which party has the most information. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

**13. Evidence.** The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-11-06)

**14. Disruptive Individuals.** The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, he will be provided a copy of the recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-2-08)

**15. Challenge of General Knowledge.** If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them either at the time of the hearing or prior to or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

**16. Closing Arguments.** Closing arguments including response in an appeals hearing will be limited to a total of five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or as 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:

A public hearing was held and all public comments were in support of adopting the pending rule. This rule change benefits employers by allowing them to retain skilled workers who are laid off for short periods of time. It also benefits seasonal workers with confirmed return-to-work dates by waiving the work-search requirement. This waiver would allow workers to receive unemployment insurance benefits for a maximum of 16 weeks while they are laid off if they meet all the remaining eligibility requirements of the unemployment insurance program.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 4, 2015 Idaho Administrative Bulletin, **Vol. 15-11, page 33-36**.

**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 or any dedicated fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Joshua McKenna, Benefits Bureau Chief, at 208-332-3570 ext. 3919.

DATED this November 27, 2015.

Joshua McKenna  
Benefits Bureau Chief  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
(208) 332-3570 ext. 3919  
(208) 334-6125 Fax  
[joshua.mckenna@labor.idaho.gov](mailto:joshua.mckenna@labor.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 72-1333, Idaho Code.



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

**\*ORIGINATING LOCATION – LIVE MEETING\***  
**Thursday, November 19, 2015**  
**10:00 a.m.(MST) 9:00 a.m.(PST)**

**Idaho Department of Labor – Central Office**  
**Conference Room 2<sup>nd</sup> Floor West**  
**317 W. Main Street**  
**Boise, ID 83735**

**\*VIDEO CONFERENCING\***

**4514 Thomas Jefferson Street**  
**Caldwell, ID 83605**

**600 N. Thornton Street**  
**Post Falls, ID 83854**

**1158 Idaho Street**  
**Lewiston, ID 83501-1960**

**1515 E. Lincoln Road**  
**Idaho Falls, ID 83401-3653**

**430 N. 5th Ave.**  
**Pocatello, ID 83205-4087**

**420 Falls Avenue**  
**Twin Falls, ID 83301**

**Join the conference by phone at (208)947-1053, Conference ID# 6873450**

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 benefits seasonal employers, particularly in the timber and construction industry, by allowing them to retain skilled workers who are laid off for short periods of time. It also benefits seasonal workers with confirmed return-to-work dates by waiving the work-search requirement. This waiver would allow workers to receive unemployment insurance benefits for a maximum of 16 weeks while they are laid off if they meet all the remaining eligibility requirements of the unemployment insurance program.

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

**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: There will be no fiscal impact to the General Fund or any dedicated fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. A great majority of the respondents were in favor of the changes or were neutral on the issue and the department, in its sole discretion, has determined it to be infeasible to hold negotiated meetings. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 2, 2015 Administrative Bulletin [Vol. 15-9, page 67](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Joshua McKenna Benefits Bureau Chief (208) 332-3570 ext. 3919.

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 November 25, 2015.

DATED this October 7, 2015.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-1501

**575. SEEKING WORK.**

Ref. Sec. 72-1366(4), (6), Idaho Code.

(3-19-99)

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

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

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

**04. Job Attachment Classifications.** For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows: (3-19-99)

**a.** Code R-Recall, U-Union or X-Both. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of ~~twelve (12)~~ sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment shall be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code. (3-20-14)( )

**b.** Code B. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability. (3-19-99)

**c.** Code C. A claimant who has no marketable skills or whose skills have become obsolete and who is unable to return to his former occupation, or who has a special need for employment-related services. (3-19-99)

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

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

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

**07. Registering and Reporting on Work-Seeking Activity.** A claimant must register for work and report as required to be eligible for benefits. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

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

**09. Work-Seeking Requirement Categories.** A claimant shall seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. A claimant that has not registered for work when filing his claim and that is required to secure employment must register with the local office within two (2) weeks of filing an initial claim for benefits. Failure to comply with work-seeking requirements may result in a denial of benefits. (4-11-06)

**a.** Code O claimant must: (3-15-02)

i. Maintain regular contact with their employer(s) or union. Code O claimant may also be required to engage in one (1) or more of the following activities to increase his prospects of returning to work or securing employment: (3-15-02)

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

iii. Maintain contact with the local office; (4-11-06)

iv. Check "help-wanted" ads in newspapers or trade publications; (3-15-02)

v. Attend a Job Search Workshop; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

**b.** Code 1 claimant will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least one (1) employer contact each week in the manner prescribed by the local office; (4-11-06)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

**c.** Code 2 claimant will be required to engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least two (2) employer contacts per week in the manner prescribed by the local office; (4-11-06)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

- iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)
- v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)
- vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)
- d.** Code 3 claimant will be required to engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)
  - i. Make at least three (3) employer contacts per week in the manner prescribed by the local office; (4-11-06)
  - ii. Attend a Job Search Workshop; (3-15-02)
  - iii. Expand work search efforts to surrounding areas or states; (3-15-02)
  - iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)
  - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)
  - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.06 - EMPLOYERS' REPORTS

#### DOCKET NO. 17-0206-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective sine die, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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, 72-432, and 72-602, 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 are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 369-372](#).

**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 fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Scott McDougall, Benefits Administration Manager, (208) 334-6063.

DATED this 20th day of November, 2015.

Mindy Montgomery, Director  
Industrial Commission  
P.O. Box 83720  
700 So. Clearwater Lane  
Boise, Idaho 83720-0041  
Phone: 208-334-6000  
Fax: 208-334-2321

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**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, 72-432, and 72-602, 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 21, 2015.

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 intends to proceed with implementation of EDI Claims Release 3.0 ("EDI"), a secured, electronic interchange of documents. EDI would allow the submission of all relative worker's compensation claims information to be reported electronically to the Commission and would alleviate repetitive data entry.

The rule change removes the Summary of Payments ("SOP"), IC Form 6 in rule and directs constituents to the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov) to obtain a similar format for electronic submission of an SOP.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

**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: There is no negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 64](#).

**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: No documents have been incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0206-1501**

**021. SUMMARIES OF PAYMENT.**

**01. Authority and Definitions.** Pursuant to Sections 72-432, 72-508, 72-602 and 72-707, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of summaries of payment to the Industrial Commission. This procedure applies to all workers' compensation claims. The following definitions shall be applicable to this Rule. (2-20-95)

***h*a.** "Closure," means that the file will be retired following an audit by the Commission. (2-20-95)

***h*b.** "Commission," means the Idaho Industrial Commission. (2-20-95)

***h*c.** "Death claim," means the injured worker died as a result of a work-related injury or occupational

disease. (2-20-95)

**gd.** "Employer" is defined in Section 72-102(11), Idaho Code, and includes agents of employers such as attorneys, sureties, and adjusters. (2-20-95)

**de.** "Impairment rated claim," means those claims in which a provider establishes an impairment rating for the injured worker. (2-20-95)

**df.** "Medical Only Claim," means the injured worker will neither suffer a disability lasting more than five calendar days as a result of a job-related injury or occupational disease nor be admitted to a hospital as an in-patient. (2-20-95)

**eg.** "Time loss claim," means the injured worker will suffer, or has suffered, a disability that lasts more than five calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (2-20-95)

**eh.** "Termination of disability," means the date upon which the obligation of the Employer/Surety/Adjuster becomes certain as to duration and amount whether by settlement, decision or periodic payments in the ordinary course of claims processing. If resolved by lump sum settlement (LSS), the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. (4-11-15)

**02. Summaries Requirement.** A summary of payment shall be filed, in duplicate, by the Employer/Surety/Adjuster within one hundred twenty (120) days of termination of disability for all time-loss claims upon which an Employer/Surety/Adjuster has made payments, except for those claims which are resolved by lump sum settlement. If all claim information has been provided via Electronic Data Interchange as prescribed by Commission rules, no hard copy summary of payment need be filed. In the case of medical-only and related benefits only cases, no summaries of payment need to be filed. In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually within the first quarter of each calendar year. Interim summaries shall be submitted setting forth substantially the same information required by Final Summaries of Payment, including the balance of payments made to the beginning of the current calendar year, payments during the calendar year, and a total of payments made. This total balance shall be carried forward as the amount of payments made to the beginning of the current year. The Final Summary shall be so designated. Supporting documentation shall be attached to any summary of payment filed with the Commission. (3-30-07)( )

**03. Form.** ~~The summary of payment forms are available, pre-printed, from the Industrial Commission, which has designated the form as IC Form 6.~~ The summary of payment shall be submitted ~~on eight and one half by eleven inch (8 1/2" X 11") paper in a format substantially similar to the following:~~ in a format substantially similar to IC Form 6, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (2-20-95)( )

~~#~~ For death claims:

**SUMMARY OF PAYMENTS**

**FATAL CASE**

Surety No. _____	I.C. No. _____
Injured Person: _____	Employer: _____
Social Security Number: _____	Address: _____
Address: _____	
Character of Injury: _____	
Date of Accident: _____	Actual Weekly Wages: _____

**DEPENDENTS**





*Miscellaneous  
Comments:*

*Claims Examiner*

*Date*

***INDUSTRIAL COMMISSION APPROVAL***

***APPROVED:-*** \_\_\_\_\_, ***20***

***BY:-*** \_\_\_\_\_

*(2-20-95)*

**04. Approval.** Within ninety (90) days of receipt of Summary of Payment as set forth above, the Industrial Commission shall notify the Employer/Surety/Adjuster that such summary has been approved or shall notify of its inability to reconcile the summary to its records and request additional information. If the Employer/Surety/Adjuster does not receive either an approval or request for additional information within the ninety (90) day period, the Employer/Surety/Adjuster may proceed with closure. In the event the Commission requests additional information, whether in writing or telephonic, the Employer/Surety/Adjuster shall submit the requested information within fifteen (15) working days. If the Employer/Surety/Adjuster is unable to furnish the requested information, the Employer/Surety/Adjuster shall notify the Commission, in writing, of its inability to respond and the reasons therefor within the fifteen (15) working days. The Commission may schedule a show cause hearing to determine whether or not the Employer/Surety/Adjuster should be allowed to continue its status under the workers' compensation laws, including whether the Employer should be allowed to continue self-insured status. (3-30-07)

**05. Changes in Status.** In case of any default by the Employer or in the event the Employer shall fail to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the Employer shall submit a summary of payments for every time-loss and death claim within one hundred twenty (120) days of the default, insolvency, or appointment of a receiver. This summary will be designated as an interim summary and does not relieve the Employer, successor or receiver from continued reporting requirements. The receiver or successor shall continue to report to the Commission, including the submission of summaries of payments and schedules of outstanding awards. (4-11-15)

## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.07 - PROCEDURES TO OBTAIN COMPENSATION

DOCKET NO. 17-0207-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective sine die, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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, 72-432, 72-602, and 67-5229, 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 are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 373-378](#).

**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 fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

DATED this 20th day of November, 2015.

Mindy Montgomery, Director  
Industrial Commission  
P.O. Box 83720  
700 So. Clearwater Lane  
Boise, Idaho 83720-0041  
Phone: 208-334-6000  
Fax: 208-334-2321

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**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, 72-432, 72-602, and 67-5229, 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 21, 2015.

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 intends to proceed with implementation of EDI Claims Release 3.0 (“EDI”), a secured, electronic interchange of documents that would allow the submission of all relative worker’s compensation claims information be reported electronically to the Commission. EDI would alleviate repetitive data entry.

The rule amendments would allow the Commission to adopt and incorporate by reference in rule the industry standard of the current International Association of Industrial Accident Boards and Commissions (“IAIABC”) EDI Claims Release 3.0 Implementation Guide, published January 1, 2015 (“EDI Implementation Guide”) and located on the IAIABC website; and Version 1.2 of the Idaho Industrial Commission Claims EDI Implementation Guide and Tables (“EDI Guide and Tables”). Updates to the EDI Guide and Tables would be made available on the IIC website. The rule amendments would further set forth the requirements of sureties to provide information in accordance with EDI reporting standards.

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

There is no fiscal impact.

**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:

There is no negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 65](#).

**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 International Association of Industrial Accidents Boards and Commissions (“IAIABC”) provides national standards for EDI Claims Release 3.0. Incorporation by reference is necessary to ensure that state rules are consistent with these national standards by incorporating the IAIABC EDI Claims Release 3.0 Implementation Guide. To clarify which national standards Idaho adopts, the Idaho-specific standards are contained in the Idaho Industrial Commission EDI Claims Implementation Guide and Trading Partner Tables, which is also incorporated by reference. The information for obtaining a copy of the Idaho Industrial Commission EDI Claims Implementation Guide and Trading Partner Tables and the IAIABC EDI Claims Release 3.0 Implementation Guide are included in the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0207-1501**

**004. INCORPORATION BY REFERENCE.**

The Idaho Industrial Commission hereby adopts and incorporates by reference the following: ( )

**01. EDI Guide and Tables.** Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables, Version 1.2 (“EDI Guide and Tables”). The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables are available at the Commission’s website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

**02. EDI Implementation Guide.** International Association of Industrial Accidents Boards and Commissions (IAIABC) EDI Claims Release 3.0 Implementation Guide - January 1, 2015 Publication (“EDI Implementation Guide”). The IAIABC Claims Release 3.0 Implementation Guide is available at the IAIABC website at [www.iaabc.org](http://www.iaabc.org). ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

Idaho Industrial Commission office hours are Monday through Friday, 8:00 am to 5:00 pm. The mailing address for filing documents is: Idaho Industrial Commission, PO BOX 83720, Boise, ID 83720-0041. The Commission’s office is located at: 700 S. Clearwater Lane, Boise, ID 83712. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to and in compliance with the Public Records Act. ( )

~~007.~~ -- 009. (RESERVED)

**010. DEFINITIONS.**

The following definitions shall be applicable to these rules. (7-1-97)

**01. Adjuster.** An individual who adjusts workers’ compensation claims. ( )

**02. Claim.** Means The making of a request with the Commission for benefits payable under the Idaho Workers’ Compensation Act, either by filing Industrial Commission (IC) Form 1A-1 entitled “Workers Compensation First Report of Injury or Illness.” ~~if~~ or by filing an application for hearing, referred to as a Complaint in the Judicial Rules, ~~has been filed~~ with the Commission, ~~the IC Form 1A-1 is not required.~~ (7-1-97)( )

**03. Claimant.** Means ~~a~~ a worker who is seeking to recover benefits under the Workers’ Compensation Law. (7-1-97)( )

**04. Claims Administrator.** An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. ( )

**05. Commission.** Means ~~t~~ The Idaho Industrial Commission. (7-1-97)( )

**06. Employer.** ~~I~~As defined in Section 72-102(~~++~~), Idaho Code, and, for the purposes of these rules, includes sureties and adjusters. (7-1-97)( )

**07. IAIABC EDI Release 3.0.** The IAIABC authored EDI Release 3.0 standards that cover the transmission of Claims (FROI and SROI), information through electronic reporting. ( )

**08. Legacy Claim.** A First Report of Injury that was filed prior to the date specified in Subsection 012.02.b. of these rules. ( )

**09. Notice.** Means ~~b~~ both the employer’s actual and constructive knowledge of the accident, injury, or occupational disease. (7-1-97)( )

**10. Trading Partner.** An insurance carrier, self-insured employer, or Claims Administrator that has entered into a Trading Partner Agreement with the Commission. ( )

**11. Trading Partner Agreement.** An agreement between the Idaho Industrial Commission and a trading partner that sets out the terms and conditions for the electronic reporting of information to the Commission. ( )

**011. ABBREVIATIONS.**

**01. EDI.** Electronic Data Interchange -- a computer-to-computer exchange of data in a standardized format. ( )

**02. FROI.** The First Report of Injury -- the first filing of information with the Industrial Commission that a reportable workplace injury has occurred or an occupational disease has been manifested, as required by Section 72-602(1), Idaho Code; filed in accordance with these rules. ( )

**03. IAIABC.** International Association of Industrial Accidents Boards and Commissions -- a not-for-profit trade association whose members are industrial accident, workers' compensation or other governmental bodies as well as associate members comprised of other industry-related organizations and individuals. ( )

**04. SROI.** The filing of a Supplemental or Subsequent Report of Injury -- the filing of additional information with the Industrial Commission, regarding benefits paid or changes in the status or condition of an injured worker, of a claim for benefits, as required by Sections 72-602(2), (3), and (4), Idaho Code; filed in accordance with these rules. ( )

**01+2. SUBMISSION OF FIRST REPORTS OF INJURY AND CLAIMS FOR COMPENSATION TO THE INDUSTRIAL COMMISSION.**

**01. Purpose.** The Industrial Commission seeks to develop a form for reporting work-related injuries and occupational diseases that is compatible with emerging standards for electronic submission of data. This will allow for more timely entry of information into the database system from which statistical reports are generated by the Commission, reduce the paper that the Commission currently receives, and is expected to reduce the cost of reporting for sureties insurance carriers, employers and the Commission. (7-1-97)( )

**02. Procedure for Submitting Claims.** ~~In order to comply with Section 72-602, Idaho Code, Form IA-1 shall be submitted to the Commission in substantially the same form as set forth below. At such time as the Commission institutes a system for on line reporting of claims, claims may be submitted electronically. Fields that require clarification are listed below with explanations and/or applicable coding information:~~ (7-1-97)( )

~~**a.** Dates: Use MM/DD/YYYY format. (7-1-97)~~

~~**b.** SIC Code: Code that represents the nature of employer's business as it is contained in the Standard Industrial Classification Manual published by the Federal Office of Management and Budget. (7-1-97)~~

~~**c.** Carrier: The surety issuing a contract of insurance and assuming financial responsibility on behalf of the employer of the claimant. In the case of a self insured, the self insured's information should be submitted. (7-1-97)~~

~~**d.** Claims Administrator: The name of the surety, adjuster, state fund, or self insured responsible for administering the claim. (7-1-97)~~

~~**e.** Employment status: This is the claimant's work status. The valid choices are full time, not employed, disabled, unknown, part time apprentice, seasonal, part time, on strike, retired, full time apprentice, volunteer, or piece worker. (7-1-97)~~

~~**f.** Date disability began: The first day on which the claimant lost time from work due to the injury or disease. (7-1-97)~~

~~**g.** Type of injury/illness: Brief description of nature of injury or illness or the appropriate National~~

~~Council on Compensation Insurance (NCCI) Detailed Claim Information (DCI) code: (7-1-97)~~

~~**h.** Part of body affected: Brief description or the appropriate DCI code(s). (7-1-97)~~

~~**i.** Department or location where accident or illness exposure occurred: Enter requested information or, if the accident or illness exposure did not occur on the employer's premises, enter address or location as specifically as possible. (7-1-97)~~

~~**j.** Nature of injury: Brief description or the appropriate DCI code(s). (7-1-97)~~

~~**k.** Work process the employee was engaged in when accident or illness exposure occurred: Describe the work process the employee was engaged in when the accident or illness exposure occurred, such as building maintenance. Enter "NA" for not applicable if employee was not engaged in a work process. (7-1-97)~~

**a.** FROI Reporting Prior to EDI Mandate. Prior to July 1, 2017, all FROI information shall be submitted to the Commission on single-sided eight and one-half inch by eleven inch (8½" x 11") white paper in a format substantially similar to Form IA-1. Form IA-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). At the Commission's discretion, claims may be submitted electronically in accordance with EDI Release 1.0 standards and any additional requirements of the Commission. ( )

**b.** FROI & SROI EDI Reporting. The Commission will require electronic submission of a First Report of Injury (FROI), effective July 1, 2017, and a Supplemental or Subsequent Report of Injury (SROI), effective July 1, 2017, in accordance with IAIABC EDI Release 3.0 and the Commission's EDI Guides and Tables, for insurance carriers, in-state Claims Administrators, and self-insured employers, as those entities are not otherwise exempted by these rules. ( )

**c.** Trading Partner Agreements. Before commencing electronic reporting, self-insured employers and insurance carriers shall sign a Trading Partner Agreement with the Commission, which must be approved by the Commission prior to initial data submission. This agreement will provide the effective date to send and receive electronic reports, which may be earlier but not later than the date above in Paragraph 012.02.b., the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements. To ensure the accuracy of reported data, the Commission may make periodic audits of insurance carrier and self-insured employer files. In the event that a Trading Partner Agreement is entered into by a claims administrator, notice to the Trading Partner of a FROI shall be deemed to be notice to the underlying insurance carrier or self-insured employer. ( )

**d.** FROI. Each electronic First Report of Injury (FROI) must comply with the formatting requirements of the IAIABC EDI Claims Release 3.0 Implementation Guide and Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. ( )

**e.** SROI. Each electronic Supplemental or Subsequent Report of Injury (SROI) must comply with the formatting requirements of the IAIABC EDI Claims Release 3.0 Implementation Guide and the Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. ( )

**f.** Report Form and Content for Parties Exempt from EDI Requirements: ( )

**i.** Individual injured workers, injured workers' legal counsel, and employers that are not insured are not required to comply with IAIABC EDI requirements for filing of the FROI and SROI. SROIs filed on legacy claims will not be accepted via IAIABC EDI Release 3.0 standards. ( )

**ii.** Employers that are not insured, individual injured workers, and injured workers' legal counsel shall submit all FROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form IA-1. Form IA-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

iii. Employers that are not insured, individual injured workers, and injured workers' legal counsel, shall submit all SROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form SROI-1. Form SROI-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

**03. Retaining Claims Files.** All employers insurance carriers and their claims administrators shall maintain their respective claim files in accordance with IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers." Section 051. IDAPA 17.02.11, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation -- Self-Insured Employers," Section 051. Upon request of the Commission, insurance carriers, claims administrators, or employers shall provide to the Commission, in whole or in part according to the request, a copy of the claim file at no cost to the Commission. (7-1-97)( )

**a.** All insurance carriers, claims administrators, or employers shall retain complete copies of claims files for the life of the claim or a minimum of five (5) years from the date of closure, whichever is shorter. (7-1-97)( )

**b.** For time-loss claims, closure will be the date upon which the insurance carrier, claims administrator, or employer files the final summary of payments, either as an appropriate EDI transaction, or as a hardcopy document for legacy claims. The Commission recommends that an insurance carrier, claims administrator, or employer retain a closed claim file for a minimum of five (5) years. (7-1-97)( )

**04. Filing Not an Admission.** Filing a claim is not an admission of liability and is not conclusive evidence of any fact stated therein. If a claim is submitted electronically, no signatures are required. (7-1-97)

**05. Filing Considered Authorization.** Filing of a claim shall be considered an authorization for the release of medical records that are relevant to or bearing upon the particular injury or occupational disease for which the claimant is seeking compensation. (7-1-97)

~~**06. Report Form and Content.** (7-1-97)~~

~~**a.** The Notice of Injury and Claim for Benefits required by this rule shall be submitted on eight and one-half by eleven inches (8 1/2" X 11") paper in a format substantially similar to that which follows. If the employer seeks to request additional information, the employer shall submit the proposed changes to the Commission for approval. Changes shall not be implemented prior to the receipt of the Commission's approval. (7-1-97)~~

~~**b.** Employers wishing to report electronically shall sign a written information sharing agreement with the Commission. This agreement will provide the effective date to send and receive electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements. The agreement must be signed by the employer and approved by the Commission prior to initial data submission. To ensure the accuracy of reported data, the Commission may make periodic audits of employer files. (7-1-97)~~

**076. Timely Response Requirement.** When the Commission requests additional information in order to process the Claim, the claimant or employer shall provide the requested information promptly. The Commission request may be either in writing or telephonic. (7-1-97)( )

**0123. -- 999. (RESERVED)**



## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective sine die, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 72-806, 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 are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 379 and 380](#).

**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 fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Scott McDougall, Benefits Administration Manager, (208) 334-6063.

DATED this 20th day of November, 2015.

Mindy Montgomery, Director  
Industrial Commission  
P.O. Box 83720  
700 So. Clearwater Lane  
Boise, Idaho 83720-0041  
Phone: 208-334-6000  
Fax: 208-334-2321

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
--

**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, and 72-806, 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 21, 2015.

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 intends to proceed with implementation of EDI Claims Release 3.0 (“EDI”), a secured, electronic interchange of documents that would allow the submission of all relative worker’s compensation claims information be reported electronically to the Commission. EDI would alleviate the repetitive data entry and bring increased productivity in its claims and benefits department that would result in less paper being generated at the agency.

The rule change would allow the electronic submission of a notice of change of status (“COS”) in a worker’s compensation claim be submitted to the Commission through EDI, rather than submission in the current paper form.

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

There is no fiscal impact.

**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:

There is no negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 67](#).

**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:

No documents have been incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0208-1501**

**061. RULE GOVERNING NOTICE TO CLAIMANTS OF STATUS CHANGE PURSUANT TO SECTION 72-806, IDAHO CODE.**

**01. Notice of Change of Status.** As required and defined by Idaho Code, Section 72-806, a worker shall receive written notice within fifteen (15) days of any change of status or condition. (4-7-11)

**02. By Whom Given.** Any notice to a worker required by Idaho Code, Section 72-806 shall be given

by: the surety if the employer has secured Workers' Compensation Insurance; or the employer if the employer is self-insured; or the employer if the employer carries no Workers' Compensation Insurance. (4-7-11)

**03. Form of Notice.** Any notice to a worker required by Idaho Code, Section 72-806 shall be mailed within ten (10) days by regular United States Mail to the last known address of the worker, as shown in the records of the party required to give notice as set forth above. The Notice shall be given in a format substantially similar to IC Form 8, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-11-15)

**04. Medical Reports.** As required by Idaho Code, Section 72-806, if the change is based on a medical report, the party giving notice shall attach a copy of the report to the notice. (4-7-11)

**05. Copies of Notice.** The party giving notice pursuant to Idaho Code, Section 72-806 shall send a copy of any such notice to the Industrial Commission, the employer, and the worker's attorney, if the worker is represented, at the same time notice is sent to the worker. The party giving notice may supply the copy to the Industrial Commission in accordance with the Commission's rule on electronic submission of documents. (~~4-7-11~~)( )

## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.09 - MEDICAL FEES

#### DOCKET NO. 17-0209-1502

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. In accordance with Section 67-5224(5)(a) and (b), Idaho Code, as specified here in this notice the pending rule becomes final and effective on July 1, 2016, after review by the legislature, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is affected by concurrent resolution, the concurrent resolution shall specify the effective date of the rule.

**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:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 381-384](#).

**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 negative fiscal impact.

**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 20th day of November, 2015.

Mindy Montgomery, Director  
Industrial Commission  
P.O. Box 83720  
700 So. Clearwater Lane  
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 21, 2015.

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 clarifies how outpatient hospital procedures are to be paid in the presence or absence of Comprehensive Ambulatory Payment Classification (C-APC) codes including status indicator J1. The coding guidelines published by Centers for Medicare & Medicaid Services (CMS) and the American Medical Association (AMA) are adopted as a standard reference for facility charges. The standard for reimbursement of rehabilitation hospitals will be changed to the same as other non-Critical Access Hospitals (CAH).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

**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: There is no negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 68](#).

**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: No documents have been incorporated by reference into this rule.

**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 28, 2015.

DATED this 2nd Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0209-1502**

**030. DEFINITIONS.**

Words and terms used in this rule are defined in the subsections which follow. (4-7-11)

**01. Charge.** Expense or cost. For hospitals and ASCs, “charge” shall mean the total charge. (4-7-11)

**a.** “Acceptable charge.” The charge for medical services calculated in accordance with this rule or as billed by the provider, whichever is lower, or the charge agreed to pursuant to a written contract. (4-7-11)

**b.** “Customary charge.” A charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (4-7-11)

**c.** “Reasonable charge.” A charge that does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined in this rule. (4-7-11)

**d.** “Usual charge.” The most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (4-7-11)

**02. Ambulatory Payment Classification (APC).** A payment system adopted by the Center for Medicare and Medicaid Services (CMS) for outpatient services. (4-7-11)

**03. Ambulatory Surgery Center (ASC).** A facility providing medical services on an outpatient basis only. (4-7-11)

**04. Average Wholesale Price (AWP).** The average wholesale price for medicine obtained from pricing data provided by the original manufacturer of that medicine to industry-wide compilers of drug prices, e.g., Red Book and Medi-Span. (7-1-13)

**05. Critical Access Hospital.** A hospital currently designated as a critical access hospital by the Centers for Medicare and Medicaid Services (CMS). (4-7-11)

**06. Hospital.** An acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. (4-7-11)(      )

**07. Implantable Hardware.** Objects or devices that are made to support, replace or act as a missing anatomical structure or to support or manage proper biological functions or disease processes and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. (4-7-11)

**08. Medical Service.** Medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply, as set forth in Section 72-102, Idaho Code. (4-7-11)

**09. Medicare Severity - Diagnosis Related Group (MS-DRG).** A system adopted by the Centers for Medicare and Medicaid Services (CMS) that groups hospital admissions based on diagnosis codes, surgical procedures and patient demographics. (4-7-11)

**10. Payor.** The legal entity responsible for paying medical benefits under Idaho’s Workers’ Compensation Law. (4-7-11)

**11. Pharmacy.** Any facility, department or other place where prescriptions are filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public. (7-1-13)

**12. Physician.** A member of any healing profession licensed or authorized to provide medical services by the statutes of this state, as set forth in Section 72-102, Idaho Code. (4-7-11)

**13. Provider.** Any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which is compensable under the Idaho’s Workers’ Compensation Law, as set forth in Section 72-102, Idaho Code. (4-7-11)

~~**14. Rehabilitation Hospital.** A facility operated for the primary purpose of assisting with the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. (4-7-11)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 two hundred dollars (\$10,200). 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%). ~~(7-1-15)~~( )

**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 forty dollars and seventy-five cents (\$140.75). The base rate for ASC services is ninety-one dollars and fifty cents (\$91.50). ~~(7-1-15)~~( )

**i.** Medical services for which there is no APC weight listed shall be reimbursed at seventy-five percent (75%) of the reasonable charge. (7-1-12)

**ii.** Status code N items or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment except as provided in Subsection 032.02.c.ii.(1). or 032.02.c.ii.(2). of this rule. (7-1-15)

**(1)** Implantable Hardware may be eligible for separate payment under Subsection 032.02.e.iii. of this rule. (7-1-15)

**(2)** Outpatient laboratory tests provided with no other hospital outpatient service on the same date, or outpatient laboratory tests provided on the same date of service as other hospital outpatient services that are clinically unrelated may be paid separately if billed with modifier L1. Payment shall be made in the same manner that services with no APC weight are paid under Subsection 032.02.c.i. of this rule. (7-1-15)

**iii.** When no medical services with a status code J1 appears on the same claim, two (2) 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%). When a medical service with a status code J1 appears on the same claim, all medical services with a status code T shall be paid at fifty percent (50%). ~~(1-1-12)~~( )

**iv.** When no medical services with a status code J1 appears on the same claim, status code Q items with an assigned APC weight will not be discounted. When a medical service with a status code J1 appears on the same claim, status code Q items shall be paid at fifty percent (50%). ~~(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 MS-DRG 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.** 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. ( )

**034.** **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 035 of this rule. (1-1-12)

**045.** **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 - IDAHO INDUSTRIAL COMMISSION

### 17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

DOCKET NO. 17-0210-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective sine die, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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, 72-404, 72-707, 72-735 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:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 385-391](#).

**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 fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Scott McDougall, Benefits Administration Manager, (208) 334-6063.

DATED this 20th day of November, 2015.

Mindy Montgomery, Director  
Industrial Commission  
P.O. Box 83720  
700 So. Clearwater Lane  
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, 72-404, 72-707, 72-735, 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 21, 2015.

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 intends to proceed with implementation of EDI Claims Release 3.0 (“EDI”), a secured, electronic interchange of documents that would allow the submission of all relative worker’s compensation claims information be reported electronically to the Commission. EDI would alleviate the repetitive data entry and bring increased productivity in its claims and benefits department that would result in less paper being generated at the agency.

The proposed rule amendment defines a Claims Administrator who adjusts workers’ compensation claims in the state of Idaho; and clarifies the adjuster is a resident of Idaho. The proposed rule amendment would also clarify the reports by Claims Administrators to the Commission.

The rule amendment would be necessary to comply with EDI rules; and “mirrors” the proposed amendments of 17.02.11.

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

There is no fiscal impact.

**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:

There is no negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 69](#).

**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: No documents have been incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0210-1501**

**010. DEFINITIONS.**

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

**01. Adjuster. An individual who adjusts workers' compensation claims. ( )**

~~02.~~ Claims Administrator. An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. ( )

~~03.~~ **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)

~~04.~~ **Indemnity Claim.** Any claim made for the payment of indemnity benefits. (4-7-11)

011. (RESERVED)

**012. RULES GOVERNING QUALIFICATION OF INSURANCE CARRIER TO UNDERWRITE WORKERS' COMPENSATION LIABILITY.**

**01. Deposit With State Treasurer.** To receive the approval of the Industrial Commission to write Worker's Compensation coverage under Section 72-301, Idaho Code, a carrier whose application has been approved by the Director of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, shall initially deposit security in the amount of two hundred fifty thousand dollars (\$250,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code. (4-7-11)

**02. Application.** Before the Commission shall approve any insurance carrier to do business under the Workers' Compensation Law, said carrier shall apply to the Industrial Commission for permission to write compensation insurance and said application shall include the following: (4-7-11)

a. A statement from the Director of the Idaho Department of insurance that the insurance carrier has been granted authority under the insurance laws of the state of Idaho to write casualty or surety insurance; (4-7-11)

b. The latest audited financial statement of said carrier; (4-7-11)

c. The name and address of the agent for service of process in Idaho; (4-7-11)

d. The name and address of the claims administrator or administrators employing an Idaho ~~resident~~ licensed resident adjuster or adjusters or the insurance carrier's own in-house Idaho adjusting staff with authority to make compensation payments and adjustments of claims arising under the Act. Each claims administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. If more than one (1) ~~adjuster~~ claims administrator is utilized in Idaho, a list of every such ~~adjuster~~ claims administrator and all corresponding policyholders shall be provided; (4-7-11)( )

e. A statement that the carrier will provide such blank forms as are, or may be, prescribed by the Commission and distributed to such employers as it may insure; (4-7-11)

f. A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer in compliance with the law for all employers insured. All carriers will use the continuous bond form set out herein; (4-7-11)

**SURETY BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the State of Idaho and the beneficiaries of awards rendered under the Workers' Compensation Law of the State of Idaho, for all sums said Principal is liable for by reason of workers' compensation policies issued to employers in the State of Idaho, insuring such employers' liability under Title 72, Idaho Code, the Workers' Compensation Law. Under the authority of Chapter 3, Title 72, Idaho Code, the liability of the Surety on this bond shall in no event exceed an amount equal to

the total amount of all outstanding and unpaid compensation awards against the Principal.

In case of any default by the Principal or in the event said Principal shall fail to pay, by reason of insolvency, or because a receiver has been appointed therefor, or by reason of refusal, neglect or delay to pay any final award or awards, the State of Idaho and any beneficiaries under the Workers' Compensation Law shall have a right of action at law against said Surety immediately upon default by said Principal.

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 (2) 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 WITNESS WHEREOF, the parties hereto have caused their names to be signed and this instrument to be sealed by the respective parties thereto this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (4-7-11)

**g.** A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, if said bonds are to be renewed; (4-7-11)

**h.** A statement that the cancellation of surety contracts will be made as set forth in the law, if said contracts are cancelled; (4-7-11)

**i.** A statement that said carrier will deposit, in addition to the security required for authorization to write Workers' Compensation coverage by these rules, such further security equal to all unpaid outstanding awards of compensation; (4-7-11)

**j.** A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission to the end that payments of compensation shall be sure and certain and not unnecessarily delayed; and (4-7-11)

**k.** A statement that said carrier will make such reports to the Commission as it may require in reference to matters under the Workers' Compensation Law, including IC Form 36A, Report of Outstanding Awards – Insurance Carriers; which must be filed quarterly with the Commission. (4-7-11)

**013. RULES GOVERNING INSURANCE CARRIERS.**

An insurance carrier must apply for and receive the approval of the Industrial Commission to write workers' compensation insurance pursuant to Section 72-301, Idaho Code. After receiving such approval, an insurance carrier shall comply with the following: (4-7-11)

**01. Maintain Statutory Security Deposits with the State Treasurer. (4-7-11)**

**a.** Each insurance carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequent to that date. (4-7-11)

**b.** In addition to the security required in Subsection 013.01.a., of this rule, each insurance carrier shall deposit an amount equal to the total unpaid outstanding awards of said insurance carrier. Such deposit shall be in the form permitted by Section 72-301, Idaho Code. Surety bonds shall be in the form set forth in Subsection 012.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. A partial release of security deposited hereunder must be requested in writing and approved by the Commission. (3-20-14)

**c.** Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book-entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. (4-7-11)

**02. Appoint Agent for Service of Process.** Each insurance carrier shall appoint the Director of the Department of Insurance as its agent to receive service of legal process. (4-7-11)

**03. Maintain Resident Idaho Office.** Each insurance carrier shall maintain a claims administrator employing an Idaho licensed resident adjuster or adjusters, or ~~its~~ the carrier's own adjusting offices or officers resident in Idaho who have been appointed and have been given full authority to make claims adjusting decisions and to authorize the payment of all compensation due as to claims arising under the Act. (~~4-7-11~~)(    )

**a.** Each authorized insurance carrier shall notify the Commission Secretary in writing of any change of the designated resident adjuster(s) for every insured Idaho employer within fifteen (15) days of such change. (4-7-11)

**b.** Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. (4-7-11)

**04. Supply Forms.** Each insurance carrier shall supply such forms as are or may be prescribed by the Commission pursuant to the Workers' Compensation Law and distribute them to all employers it insures. A list of required forms is available from the Employer Compliance Bureau of the Industrial Commission, telephone (208)334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-20-14)

**05. Comply with Industrial Commission Reporting Requirements.** Each insurance carrier shall within the time prescribed, file such reports and respond to such information requests as the Industrial Commission may require from time to time concerning matters under the Workers' Compensation Law. (~~4-7-11~~)(    )

**06. Report Proof of Coverage.** (4-7-11)

**a.** Each insurance carrier shall report proof of coverage information to a third party designated by the Industrial Commission as its agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The name and address of the Commission's designated agent(s) is available upon request from the Employer Compliance Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-20-14)

**b.** As an alternative to Subsection 013.06.a., an insurance carrier may be allowed to report proof of coverage information directly to the Industrial Commission in an electronic format prescribed by the Commission by first making a written request to the Commission and obtaining the Commission's permission. A formal written agreement with the Commission is required prior to the electronic transmission of proof of coverage data to the Commission. (3-20-14)

**c.** The Industrial Commission hereby adopts the International Association of Industrial Accident Boards and Commissions' (IAIABC) electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout, data element requirements, and transaction standards is available upon request from the Employer Compliance Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). Each insurance carrier shall report data for all mandatory elements in the current IAIABC proof of coverage record layout and transaction standards on each policy reported. (3-20-14)

**d.** The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance carrier providing coverage. (4-7-11)

**07. Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days.** Each insurance carrier shall report the issuance of any new workers' compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. (4-7-11)

**08. Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute.** Each insurance carrier shall report the cancellation and/or nonrenewal of any workers' compensation insurance policy to

the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. Receipt of cancellation or nonrenewal notices by the Commission's designated agent shall be deemed to have been received by the Commission. (4-7-11)

**09. Report Election of Coverage on Form IC52 or Similar Format.** Each insurance carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," which follows this chapter as Appendix A. This report shall be submitted to the Industrial Commission in writing on eight and one-half by eleven inch (8 1/2" x 11") paper. (4-7-11)

**10. Report Deductible Policy.** On or before March 3rd of each year, every insurance carrier shall submit a report of all deductible policies that were issued and in effect during the previous calendar year. That report shall be submitted in a form substantially similar to the current "Deductible Policy Report" available upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). The report shall include the following information: insured name, policy number, effective and expiration dates, deductible amount, the premium charged for the policy before credit for the deductible and the final premium after credit for the deductible. (3-20-14)

**11. Report Outstanding Awards.** Each insurance carrier shall report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, any outstanding award. (4-7-11)

**a.** The report of outstanding awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. (4-7-11)

**b.** The report shall be filed even if there are no outstanding awards. In that event, the carrier shall certify the fact that there are no outstanding awards to be reported. (4-7-11)

**c.** The report shall be submitted on or in a format that is substantially the same as the current Form IC36A, "Report of Outstanding Awards – Insurance Carriers" available upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). 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 1/2" x 11") in size. (3-20-14)

**d.** The report shall be signed and certified to be correct by a corporate officer. If an insurance carrier has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify and file a consolidated report of outstanding awards. (4-7-11)

**e.** The report shall list all outstanding awards, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. (4-7-11)

**12. Comply with Law and Rules.** Each insurance carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed. (4-7-11)

**014. -- 050. (RESERVED)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** (4-7-11)

**a.** All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. (4-7-11)

**b.** The insurance carrier shall authorize and require a member of its in-state staff or a resident

licensed, resident claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: ~~(4-7-11)~~( )

- i. Investigate and adjust all claims for compensation; (4-7-11)
- ii. Pay all compensation benefits due; (4-7-11)
- iii. 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)
- iv. Enter into compensation agreements and lump sum settlements with Claimants; and (4-7-11)
- v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

c. As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) claims administrator for each policy of workers' compensation insurance. ~~(4-7-11)~~( )

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

- a. First Report of Injury and Claim for Benefits; (4-7-11)
- b. Copies of bills for medical care; (4-7-11)
- c. Copy of lost-time computations, if applicable; (4-7-11)
- d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)
- e. Employer's Supplemental Report; and (4-7-11)
- f. Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed authorized from and maintained at in-state offices. ~~(4-7-11)~~( )

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or insurance carrier. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)



**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. (~~4-7-11~~)( )

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. (4-7-11)

**b.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

### 17.02.11 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective sine die, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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, 72-301, and 72-304, 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 are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 392-399](#).

**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 fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Scott McDougall, Benefits Administration Manager, (208) 334-6063.

DATED this 20th day of November, 2015.

Mindy Montgomery, Director  
Industrial Commission  
P.O. Box 83720  
700 So. Clearwater Lane  
Boise, Idaho 83720-0041  
Phone: 208-334-6000  
Fax: 208-334-2321

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**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, 72-301, and 72-304, 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 21, 2015.

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 intends to proceed with implementation of EDI Claims Release 3.0 (“EDI”), a secured, electronic interchange of documents that would allow the submission of all relative worker’s compensation claims information be reported electronically to the Commission. EDI would alleviate the repetitive data entry and bring increased productivity in its claims and benefits department that would result in less paper being generated at the agency.

The proposed rule amendment defines a Claims Administrator who adjusts workers’ compensation claims in the state of Idaho; and clarifies the adjuster is a resident of Idaho. The proposed rule amendment would also clarify the reports by Claims Administrators to the Commission.

The rule amendment would be necessary to comply with EDI rules; and “mirrors” the proposed amendments of 17.02.10.

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

There is no fiscal impact.

**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:

There is no negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015 Idaho Administrative Bulletin, [Vol 15-5, page 70](#).

**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:

No documents have been incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Scott McDougall, Benefits Administration Manager, (208) 334- 6063.

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 28, 2015.

DATED this 2nd Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0211-1501**

**010. DEFINITIONS.**

For the purposes of this chapter, the following definitions are applicable:

(4-7-11)

- 01.** Adjuster. An individual who adjusts workers' compensation claims. ( )
- 02.** Claims Administrator. An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. ( )
- 03.** **Compensation.** All benefits payable under the provisions of the Idaho Workers Compensation Law. (3-29-12)
- 04.** **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)

**011. -- 012. (RESERVED)**

**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). However, if the applicant is approved to apply under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government, the employer must have an annual Idaho payroll of at least four million dollars (\$4,000,000) as of the effective date of the Commission's approval to act as a self-insured employer in Idaho. (4-11-15)
- 02. Application.** Submit a completed application, available from the Industrial Commission's Fiscal Bureau, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Bureau, telephone (208) 334-6000. (3-20-14)
- 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. Claims Adjusting.** Designate in writing a claims administrator employing an Idaho licensed, Idaho resident adjuster including name and address. Each claims administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. (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 five (5) calendar years. (3-29-12)
- 06. Excess Insurance.** Provide an insurance plan that must include excess insurance coverage and copies of all proposed policies of excess workers' compensation insurance coverage, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)
- 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. (3-29-12)

**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. (3-29-12)

**09. 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, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)

**10. Supplemental Information.** Provide supplemental information as requested; (4-7-11)

**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 fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000) 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, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)

**12. Initial Guaranty Agreement.** The Commission may allow or, where financial reports or other factors such as the high risk industry of the employer indicate the need, require an employer that is organized as a joint venture or a wholly owned subsidiary to provide a guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho workers' compensation claims of employees of that joint venture or subsidiary employer seeking to become self-insured. The guaranty agreement shall be in substantially the same form as the current sample Indemnity and Guaranty Agreement and, as applicable, the companion Consent of the Board of Directors, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-20-14)

**13. 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), unless the applicant was approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. Any self-insured employer that does not meet the payroll requirement 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. (4-11-15)

**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, 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), unless the applicant was approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. In addition thereto, the self-insured employer shall deposit additional security in such amount as the Commission determines is

necessary to secure the self-insured employer's total unpaid liability for compensation under the Workers' Compensation Law. No approved security shall be accepted for deposit above its par value. Additional deposits of approved security may be required semi-annually if the market value of an approved investment falls below its par value or if the total value of the employer's security deposit falls below the total security required to be maintained on deposit when calculated in accordance with this rule. (4-11-15)

**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. (3-29-12)

**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. No credit will be given for any excess insurance coverage provided by a surplus lines carrier, as described in Chapter 12, Title 41, Idaho Code. (3-20-14)

**d.** All security deposited by the self-insured employer shall be maintained as provided by Section 72-302, Idaho Code. (4-7-11)

**e.** 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 Bureau of the Industrial Commission, Telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-20-14)

**03. Continue or Provide Guaranty Agreement. (3-20-14)**

**a.** A self-insured employer that is organized as a joint venture or a wholly owned subsidiary shall continue in effect any guaranty agreement that the Commission has previously allowed or required, until termination is permitted by the Commission. (3-20-14)

**b.** Where an adverse change in financial condition or other relevant factors such as claims history or industry risk indicates the need, a self-insured employer that is organized as a joint venture or a wholly owned subsidiary may be allowed to, or shall upon request, provide a guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho workers' compensation claims of employees of that joint venture or subsidiary self-insured employer. The guaranty agreement shall be in substantially the same form as the current sample Indemnity and Guaranty Agreement, and as applicable, the companion Consent of the Board of Directors, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-20-14)

**04. Maintain a Licensed Resident Adjuster.** Maintain ~~a resident~~ an Idaho licensed, resident claims adjuster located within the state of Idaho who shall have full authority to ~~service~~ make decisions and to authorize the payment of all compensation on 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)

**05. File Reports.** Report to the Industrial Commission semi-annually, or more often as required by the Commission, total unpaid liability on all open claims. (3-29-12)

a. The semi-annual report of total unpaid liability shall be filed with the Industrial Commission by the end of the months of January and July. (3-29-12)

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. (3-29-12)

c. The report shall be filed even if there are no open claims. In that event, the employer shall certify the fact that there are no open claims to be reported. (3-29-12)

d. The report shall be submitted on or in a format that is substantially the same as the current Form IC-211, "Self-Insured Employer Report of Total Unpaid Liability," available from the Fiscal Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). 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. (3-20-14)

e. 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 unpaid liability. (3-29-12)

f. A self-insured employer shall also make, within the time prescribed, such other reports ~~to~~ and respond to such information requests as the Commission ~~as it~~ may require ~~in reference to~~ from time to time concerning matters under the Workers' Compensation Law. (4-7-11)( )

**06. 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. For the purpose of determining such premium for uninsured contractors of a self-insured employer, the most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining such coverage. (3-20-14)

**07. 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)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The self-insured employer shall designate and require an idaho licensed, resident adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. (~~4-7-11~~)(    )

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

- a.** First Report of Injury and Claim for Benefits; (4-7-11)
- b.** Copies of bills for medical care; (4-7-11)
- c.** Copy of lost-time computations, if applicable; (4-7-11)
- d.** Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)
- e.** Employer's Supplemental Report; and (4-7-11)
- f.** Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed authorized from and maintained at in-state offices. (~~4-7-11~~)(    )

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the self-insured employer. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or self-insured employer. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a self-insured employer to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes

and rules pertaining to prompt payment of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. (4-7-11)( )

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. (4-7-11)

**b.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)



## IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE

### 28.02.01 - IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (ICDBG)

DOCKET NO. 28-0201-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective on July 1, 2016, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 67-47021(2) Idaho Code, and Housing and Community Development Act of 1974, as amended, (42 USC, Sec. 5301) and Department of Housing and Urban Development Rules 24 CFR, Part 570, Subpart I.

**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 are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 506-544](#).

**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.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Megan Ronk, Chief Operating Officer, at 208-334-2470.

DATED this 7th day of December, 2015.

Megan Ronk  
Chief Operating Officer  
Idaho Department of Commerce  
700 West State Street  
PO Box 83720  
Boise, ID 83720-0093  
Tel: (208)-334-2470 / Fax: (208)-334-2631

#### 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 67-4733, Idaho Code, and Code of Federal Regulations (CFR) 24 CFR 570.480.

**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 21, 2015.

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

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

The proposed changes will help the ICDBG program align with its Consolidated Plan, eliminate confusing language, comply with the Code of Federal Regulations (CFR), and help facilitate increasing interest from Idaho cities and counties. The changes will better define program eligible activities, expand the Senior and Community Center set-aside to include public parks, and update verbiage and terminology.

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

The rule will not require the imposition of a fee.

**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:

Idaho Department of Commerce does not anticipate a fiscal impact from this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the ability to communicate proposed rule changes and come to a consensus with 237 Idaho cities and counties is not feasible. However, some of the rule changes are based on city and county feedback from a September 2014 survey regarding the ICDBG program. The survey and public hearings were held in order to develop the ICDBG program's Five-Year Consolidated Plan. This plan is the guiding document of the CDBG goals and method of funding distribution.

**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:

ICDBG is a federally funded program and therefore must adhere to, and comply with, the CFR. Incorporating the CFR by reference allows for ICDBG to integrate ongoing updates without having to update Idaho code each time. This is a cost savings for taxpayers as there is no need to reprint rules with each update.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Megan Ronk, Chief Operating Officer, (208) 334-2470.

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 28, 2015.

DATED this 2nd Day of September, 2015.

Megan Ronk  
Chief Operating Officer  
Idaho Department of Commerce  
700 West State Street  
PO Box 83720  
Boise, ID 83720-0093  
Tel: (208)-334-2470 / Fax: (208)-334-2631

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 28-0201-1501**

**000. LEGAL AUTHORITY.**

In 1981 Congress amended the Community Development Act of 1974 to allow states to assume the Department of Housing and Urban Development's *Small-Cities State* Community Development Block Grant Program. The Department of Commerce, through these rules, is implementing the state's administration of the *Small-Cities State* Community Development Block Grant program as authorized by the Housing and Community Development Act of 1974, as amended, (42 USC, Sec. 5301) and Department of Housing and Urban Development Rules 24 CFR, Part 570, Subpart I. Funds which are appropriated annually by Congress are allocated by statutory formula to each state. This chapter is adopted in accordance with Section 67-4702(2), Idaho Code. (3-29-10)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

IDAPA 28.02.01 incorporates by reference the following: (3-29-10)

**01. 24 CFR 570.489, ~~pages 41 and 43~~, dated April 1, 2014.** Access to this document is available through the Department of Commerce website at <http://commerce.idaho.gov/>. (3-29-10)( )

**02. 24 CFR 570.611, ~~page 46~~, dated April 1, 2014.** Access to this document is available through the Department of Commerce website at <http://commerce.idaho.gov/>. (3-29-10)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**009. DEFINITIONS.**

For the purposes of these rules, the following words are defined. (7-6-94)

**01. Allocation.** The state of Idaho's share of the Small Cities Community Development Block Grant Program as determined by the funding formula contained in the Housing and Community Development Act of 1974, as amended. (7-6-94)

**02. Appropriation.** The Federal funding, as set by Congress, for the Department of Housing and Urban Development (HUD). (7-6-94)

**03. CDBG.** The Community Development Block Grants, especially the *Small-Cities State* Program administered by HUD. (7-6-94)( )

**04. Department.** The Idaho Department of Commerce. (3-29-10)

**05. Grant.** The transfer of ICDBG funds, in accordance with state and federal law, from the Department to a unit of local government for the specific purpose of accomplishing the project described in the Application. (7-6-94)

**06. ICDBG.** The Idaho Community Development Block Grants. The Idaho Department of Commerce administered Small Cities ICDBG Program. (7-6-94)

**010. GENERAL OBJECTIVES.**

**01. National Objectives.** The primary objective of this program is to develop viable communities by expanding economic opportunities and providing decent housing, "principally for persons of low and moderate incomes." Consistent with this primary objective, projects funded under Idaho's Community Development Block Grant Program must be designed so that each activity will benefit either low and moderate income persons, will aid in the prevention or elimination of slums and blight, or will meet other community development needs having a

particular urgency because of existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. (7-6-94)

**02. State Objectives.** The state's objective of the Idaho Community Development Block Grant (ICDBG) program is to assist Idaho communities in developing their economy, public facilities and housing to provide greater opportunities, principally for low and moderate income citizens, through: increasing economic opportunities by assisting business expansions and job creation; improving community infrastructure to accommodate economic growth and eliminate health and safety problems; improving housing stock and expanding housing choices; and rebuilding or revitalizing blighted areas. (7-6-94)

~~**03. ICDBG Funds.** ICDBG funds shall not be used to fund projects or activities which can be funded primarily by other state, private or federal resources. (7-6-94)~~

## **011. GRANT PROGRAM.**

**01. Grant Types.** The following six (6) types of grants are available under the Idaho Community Development Block Grant program: Public Facility or Housing (PFH); Economic Development (ED); Community Center (CC) or Senior Citizen Center (SR); and Imminent Threat (IT). (7-1-98)

**02. General Descriptions.** In any project, eligibility must meet two (2) tests. First, the project must be described by one (1) or more eligible activities (Section 022) and second, the project must qualify in a national objective (Section 015). (7-6-94)

**03. Public Facility or Housing Grants.** (7-6-94)

**a.** Public facility projects are those that construct or improve facilities including, but not limited to, sewer or water systems, streets, curbs, gutters, and sidewalks, fire stations, public medical and health facilities, libraries, group homes, publicly owned commercial or industrial property. Some public facilities such as city halls, courthouses, police stations, jails, and schools are by definition ineligible (Section 052) or have extreme difficulty meeting a national objective. ~~Other public facilities such as solid waste disposal, parks, maintenance shops are sometimes eligible only in very narrow circumstances. (7-1-98)( )~~

**b.** Housing projects are those that improve or ~~construct~~ **rehabilitate** housing units for low and moderate income families. Projects include, but are not limited to, rehabilitation of public housing, rental rehabilitation, owner-occupied housing rehabilitation, acquisition of real property for rental rehabilitation, acquisition of land and site development for new rental housing, replacement housing, rehabilitation of school buildings into housing, acquisition of sites, site development and acquisition of manufactured housing for manufactured home parks. (7-6-94)( )

**04. Economic Development Grants.** There are two (2) types of Economic Development projects. (7-6-94)

**a.** The first is the provision of infrastructure, usually sewer, water, or street, to a specific business expansion or new location. Manufacturing or processing companies are the more competitive projects. The grant funds assist with the public costs of extending services in exchange for a commitment from the business to create jobs for low and moderate income persons. (7-6-94)

**b.** The second grant is to assist with downtown revitalization. The downtown merchants and landowners must organize themselves and develop a plan of specific improvement actions. The downtown area must meet the slum and blight national objective. (7-6-94)

**05. Center and Park Grants.** (7-1-98)

~~#~~ Community Center Grants ~~Community Center projects, Senior Center Grants, and Public Park Grants~~ are ~~a~~ specific types of public facility projects. Funds are set aside for these facilities only. Community ~~e~~Centers, ~~Senior Centers, and Public Parks~~ must be owned or operated for the benefit of all project area or neighborhood residents. (7-1-98)( )

~~b. Senior Citizen Center Grants. Senior Citizen Center projects are a specific type of public facilities project. Funds are set aside for these facilities and community centers only. The center must be owned or operated for the benefit of senior citizens. (7-1-98)~~

**06. Imminent Threat Grants.** Imminent Threat projects are those which correct or eliminate a recent threat to human health or safety (see Section 021 and Section 108). (7-6-94)

**07. Grant Award System.** Since demand for grants far exceeds available funds, a competitive system is used to select grants, except for the imminent threat and technical assistance grants. Grant applications shall be submitted, rated and selected for funding according to the criteria and procedures established by these rules. (7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. BENEFIT TO LOW AND MODERATE INCOME PERSONS.**

**01. Definition.** Members of a family having an income within family income standards established by HUD for housing and community development programs. Unrelated individuals are considered one (1) person families. Low income is defined as families with income of fifty percent (50%) or less of the county median income. Moderate income is defined as families with income of eighty percent (80%) or less of the county median income. HUD established that county median income is the greater of either the county median income or the median income of the "non-entitlement" area of the state. Activities considered to benefit LMI persons are divided into four (4) categories: area benefit activity, limited clientele activity, housing activity, and job creation or retention activity. (7-6-94)

**02. Area Benefit Activity.** A grant project which meets the needs of LMI persons residing in an area where at least fifty-one percent (51%) of the residents are LMI persons. The benefits of this project are available to all persons in the area regardless of income. Such an area need not have the same boundaries as census tracts or other officially recognized boundaries but must be the entire area served by the project. A project that serves an area that is not primarily residential in character (i.e. street construction in an industrial park) shall not qualify under this category. (7-6-94)

**03. Limited Clientele Activity.** A grant project which benefits a specific group of people, at least fifty-one percent (51%) of whom are LMI persons. Limited clientele activities also include special projects to remove material and architectural barriers which restrict the mobility and accessibility of elderly or ~~persons~~ **adults** with disabilities to publicly-owned and privately-owned non-residential buildings. To qualify in limited clientele activity, the activity must meet one (1) of the following tests: (7-6-94)( )

**a.** Benefits a clientele group who are generally presumed to be principally LMI persons. Currently, the following groups are presumed by HUD to meet this criterion: elderly persons, homeless persons, ~~persons~~ **adults** with disabilities, migrant farm workers, abused children, battered spouses, illiterate ~~persons;~~ **adults**, or **adults living with the disease AIDS;** (7-6-94)( )

**b.** Information on family **or household** size and income proves that at least fifty-one percent (51%) of the clientele are persons whose family income does not exceed the LMI limit; or (7-6-94)( )

**c.** Income eligibility requirements limit the activity exclusively to LMI persons; or (7-6-94)

**d.** By the nature and location it may be concluded that the clientele will primarily be LMI persons; or (7-6-94)

**e.** A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or persons with disabilities to publicly owned and privately owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one (1) dwelling unit. (7-6-94)

**04. Housing Activity.** A grant project which adds to or improves permanent, residential structures which, upon completion, will be occupied by LMI households. This project may include, but not necessarily be limited to, the acquisition or rehabilitation of property; ~~and conversion of non-residential structures; and new housing construction.~~ (7-6-94)( )

**a.** The housing may be either one (1) family or multifamily structures. If the structure contains two (2) dwelling units, at least one (1) must be so occupied, and if the structure contains more than two (2) dwelling units, at least fifty-one percent (51%) of the units must be so occupied. Where two (2) or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining “affordable rents” for this purpose. (7-6-94)

**b.** The following shall also qualify under this criterion. When less than fifty-one percent (51%) of the units in a structure will be occupied by low and moderate income households, ICDBG assistance may be provided in the following limited circumstances: the assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; not less than twenty percent (20%) of the units will be occupied by low and moderate income households at affordable rents; and the proportion of the total cost of developing the project to be borne by ICDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households. (7-6-94)

**05. Job Creation or Retention Activity.** A grant project which creates or retains permanent jobs, at least fifty-one percent (51%) of which are either taken by LMI persons or considered to be available to LMI persons. (7-6-94)

**a.** Acceptable documentation on applicant/employee family income includes any of the following: (3-20-97)

**i.** Notice that employee/applicant is a referral from state, county, or local employment agency or other entity that agrees to refer individuals who they determine to be low or moderate income based on HUD’s criteria. These entities must maintain documentation which is to be available for grantee, Department, or federal inspection; or (3-20-97)

**ii.** Written certification signed by the employee/applicant of family income and size to establish income status showing either: The actual income of the family; or, a statement that the family income is below that required by CDBG standards. These forms must include a statement that they are subject to verification by the local or federal government; or (3-20-97)

**iii.** Evidence that employee/applicant qualifies for assistance under another program with income qualification criteria at least as restrictive as those used by HUD (e.g., referrals from the Workforce Investment Act (WIA) program), except for referrals under the WIA program for dislocated workers. (4-11-06)

**b.** For an activity designed to create permanent jobs where at least fifty-one percent (51%) of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least fifty-one percent (51%) of the jobs will be “held by”, or will be made “available to”, low and moderate income persons. The unit of local government and the business must determine at the time of pre-application whether they will use “held by” or the “available to” criteria as their method of documenting LMI jobs. ~~The option chosen cannot be changed at a later date.~~ (3-20-97)( )

**c.** For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least fifty-one percent (51%) of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two (2) years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a



low or moderate income person upon turnover.

(7-6-94)

d. Jobs will be considered to be “available to” low and moderate income persons for these purposes only if: special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and the unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs. First consideration shall consist of the business using a hiring practices that in all likelihood will result in over fifty-one percent (51%) of persons hired being LMI persons, the business must seriously consider/interview an adequate number of LMI applicants, the availability of transportation must be considered to allow LMI persons to commute to the job site. The hiring practice used to make jobs available to LMI persons shall be identified in the pre-application and approved by the Department. (3-20-97)

e. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except: in certain cases, such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park), the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by ICDBG funds; and where ICDBG funds are used to pay for the staff and overhead costs of a subrecipient specified in Section 105(a)(15) of the Act making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one (1) year period. (7-6-94)

f. In any case where ICDBG funds are used for public improvement (e.g., water, sewer and road) and the national objective is to be met by job creation or retention as a result of the public improvement, the requirement shall be met as follows: the assistance must be reasonable in relation to the number of jobs expected to be created or retained by the affected business(es) within two (2) years from the completion of the public improvement. If the ICDBG assistance is under ten thousand dollars (\$10,000) per job created or retained, then only businesses applying for ICDBG assistance need to be assessed for low and moderate income job creation or retention. If the ICDBG equals or exceeds ten thousand dollars (\$10,000) per job then any business benefiting by the public improvement, for a period of up to one (1) year after the physical completion of the public improvement, must be assessed for low and moderate income job creation or retention. (3-29-10)

**017. -- 019. (RESERVED)**

**020. AID IN PREVENTION/ELIMINATION OF SLUMS AND BLIGHT.**

01. **Definition.** ~~An area of slum and blight is a definable geographic area which contains a substantial number of deteriorating or dilapidated buildings or two (2) or more deteriorated public facilities throughout the area.~~ The area impairs the sound growth of a community, constitutes an economic liability or a social liability to the community, or contains conditions which are a menace to public health, safety or welfare. Any Eligible Activity may be used to remove conditions that are contributing to the slum and blighting conditions. Activities may address slum and blight conditions on either an area basis or spot basis. (7-6-94)(      )

02. **Elimination of Slum or Blight on an Area Basis.** To qualify under the national objective of slum/blight on an area basis, a project must meet ~~all of the following criteria. First, the area shall, by resolution, be officially designated by the grantee and must meet the definition of a slum, blighted, deteriorated or deteriorating area. The resolution shall establish the boundaries of the slum and blighted area and generally describe the conditions of slum and blight. Second, there must be identified and documented a substantial number of deteriorated or deteriorating buildings, or public improvements throughout the area. This condition will be considered fulfilled if two (2) or more public improvements throughout the area are in a general state of deterioration. Third, the project must address one (1) or more of the conditions which contributed to the deterioration of the area~~ the criteria as defined in 24 CFR 570.483(c)(1). (7-6-94)(      )

03. **Elimination of Slum or Blight on a Spot Basis.** To comply with the national objective of elimination or prevention of slums or blight outside a slum or blighted area, a project must meet the ~~following criteria: the project must be designed to eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area; and the project is limited to: acquisition, clearance, relocation, historic preservation, or rehabilitation of buildings (but only to the extent necessary to eliminate specific conditions~~

~~detrimental to public health and safety). The grantee shall by resolution declare the property(ies) to be in a severely deteriorated condition, and generally describe the conditions of the building. The grantee shall document the deteriorating and blight conditions including but not limited to code inspections, structural inspections, appraisals, the impact of the property on surrounding property and the health and safety problems. The grantee shall describe and document their legal options and actions relative to the project as defined in 24 CFR 570.483(c)(2).~~

~~(7-6-94)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. ELIGIBLE ACTIVITIES.**

An activity ~~listed in Sections 023 through 051 which~~ as identified in 24 CFR 570.482 eligible activities that also meets one (1) of the three (3) national objectives is considered eligible and may be financed in whole or in part with Idaho Community Development Block Grant (ICDBG) funds. Each grantee must ensure and maintain evidence that each of its ICDBG-funded activities meets one (1) of the national objectives. A grant project shall consist of a combination of eligible activities. Each activity must also be in compliance with the following conditions:

~~(3-20-97)( )~~

**01. Environmental Review.** An environmental review and clearance procedure (contained in the Code of Federal Regulations (24 CFR Part 58)) must be completed for each project consisting of activities as defined in this Section. (7-6-94)

**02. Cost Principles.** Costs incurred must conform with the requirements of OMB Circulars A-87 “Cost Principles Applicable to Grants and Contracts with State and Local Governments” or A-122, “Cost Principles for Nonprofit Organizations.” (7-6-94)

**03. Mixing Eligible and Ineligible Uses.** A public facility eligible for ICDBG assistance may be funded even if it is part of a multiple-use building containing ineligible uses if: (7-6-94)

a. The eligible portion of the building is a designated and discreet area of the building; (7-6-94)

b. The applicant can determine the costs attributable to the eligible use or eligible portion of the facility as distinct from the overall costs of the facility. (7-6-94)

**04. Special Assessments.** (7-6-94)

a. **Definition.** The recovery of the capital costs of a public improvement, such as streets or sewer lines, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement. The fee amount represents the pro-rata share of the capital costs of the public improvement levied against the benefiting properties. The term does not relate to user fees or taxes or the establishment of the value of real estate for the purpose of levying real estate, property or ad valorem taxes. (7-6-94)

b. **Restrictions.** For projects funded beginning in 1984, no special assessments will be levied against properties owned and occupied by low and moderate income persons to recover that portion of a capital expenditure funded in whole or in part by ICDBG funds. This includes fees or assessments made as a condition to obtain access to a facility. Grant recipients may levy assessments to recover the portion of a capital expenditure funded from other sources if the assessments of the low and moderate income owner-occupants are paid with ICDBG funds. Funds collected through special assessments are not program income if the assessment of LMI owner-occupants are paid with ICDBG funds. ICDBG funds may be used to pay for assessments levied against property owned and occupied by low and moderate income persons even if the public facility improvements are financed solely from other sources, and if the improvements were carried out in compliance with ICDBG rules. (7-6-94)

**05. Beneficiary Data.** Each grantee shall collect and maintain data on the persons to directly benefit from the grant project. The data shall include information on race, gender and ethnic characteristics of persons who are applicants for, participants in, or beneficiaries of the grant project. (7-6-94)



**~~023. ACQUISITION OF REAL PROPERTY.~~**

~~ICDBG funds may be used to acquire real property in whole, or in part, by purchase, long term lease (if for fifteen (15) years or more), donation, or otherwise. The following real property or interests therein is eligible for acquisition: property which is blighted, deteriorated, deteriorating, undeveloped or inappropriately developed from the standpoint of sound community development and growth; property which is appropriate for rehabilitation or conservation activities; property which is appropriate for the preservation or restoration of historic sites; the beautification of urban land; the conservation of open spaces, natural resources, and scenic areas; the provision of recreational opportunities; or the guidance of urban development; property which is to be used for the provision of public works, facilities, and improvements eligible for assistance under these rules; and property which is to be used for housing.~~ (7-6-94)

**~~024. PUBLIC FACILITIES AND IMPROVEMENTS.~~**

~~The acquisition, construction, rehabilitation, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promotes energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements. Included are facilities to provide shelter for persons having special needs provided such facilities are not prohibited by the new housing construction prohibition.~~ (7-6-94)

**~~025. CODE ENFORCEMENT.~~**

~~Code enforcement involves the payment of salaries and overhead cost directly related to the enforcement of local codes. ICDBG funds may be used only in deteriorated or deteriorating areas where enforcement, together with public or private improvements or services, may be expected to arrest the decline of the area.~~ (7-6-94)

**~~026. CLEARANCE AND DEMOLITION.~~**

~~Clearance, demolition, removal of buildings and facilities, and movement of structures to other sites.~~ (7-6-94)

**~~027. REMOVAL OF ARCHITECTURAL BARRIERS.~~**

~~Removal of material and architectural barriers which restrict the mobility and accessibility of elderly and persons with disabilities to publicly or privately owned buildings, facilities and improvements.~~ (7-6-94)

**~~028. RENTAL INCOME PAYMENTS.~~**

~~Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be utilized for the relocation of individuals and families displaced by activities under this title.~~ (7-6-94)

**~~029.—032. (RESERVED)~~**

**~~033. DISPOSITION OF PROPERTY.~~**

~~Costs associated with the disposition (through sale, lease, donation, or otherwise) of any real property acquired with ICDBG funds, or with the retention of real property for public purposes. Reasonable costs of temporarily managing such property (or property acquired under urban renewal) until final disposition of the property is made. Disposition costs include fees paid for: appraisals, surveys, marketing, legal services, financial services, transfer taxes and other costs involved in the transfer of ownership of property. Any proceeds from the disposition of such property shall be considered program income.~~ (7-6-94)

**~~034. PUBLIC SERVICES.~~**

~~Provisions of new or increased levels of public services, including, but not limited to, those concerned with employment, crime prevention, child care, health, drug abuse, fair housing, counseling, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the state) during any part of the twelve (12) month period immediately preceding the date of submission of the application.~~ (7-6-94)

**~~035. USE OF ICDBG FUNDS FOR LOCAL MATCH.~~**

~~Payment of the non federal share required in connection with a federal grant in aid program undertaken as part of activities assisted under the ICDBG program. Payment is limited to only the eligible activities which are in compliance with ICDBG requirements.~~ (7-6-94)

**~~036. COMPLETION OF URBAN RENEWAL PROJECTS.~~**

~~Payment of the cost of completing a project funded under Title I of the Housing Act of 1949. (7-6-94)~~

~~037. **RELOCATION PAYMENT.**~~

~~Relocation payments and assistance for displaced individuals, families, business organizations and farm operations when determined by the grantee to be appropriate. (7-6-94)~~

~~038. **PLANNING ACTIVITIES.**~~

~~01. **Community Development Plan.** Develop a comprehensive community development plan. (7-6-94)~~

~~02. **Policy, Planning and Management Capacity.** Develop a policy, planning and management capacity so that the recipient of assistance under this title may more rationally and effectively: determine its needs; set long-term goals and short-term objectives; devise programs, regulations and activities to meet these goals and objectives; evaluate the progress of such programs in accomplishing these goals and objectives; and include the carrying out of activities as described in Section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981. (7-6-94)~~

**[CODIFIED SECTION 039 IS BEING RENUMBERED TO SUBSECTION 022.06]**

~~039. **06. Administrative Activities.** Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development, housing activities, and the costs related to the establishment and administration of federally approved enterprise zones; to carry out management, coordination and monitoring of activities necessary for effective planning and implementation, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities including planning under [Section 038 24 CFR 570.482](#). These costs shall not exceed ten percent (10%) of ICDBG grant funds and any program income. (3-20-97)( )~~

~~040. **SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES.**~~

~~01. **Economic Development Activities.** Grant funds may be used for economic development activities which directly assist a specific business firm. In authorizing activities, the Department will take into account the amount of permanent employment to be generated which is available to low and moderate income persons, the necessity of the assistance or activity to stimulate private investment and the degree of impact on the economic conditions of the applicant. (7-6-94)~~

~~02. **Eligible Activities.** The following are eligible activities that may be carried out: (7-6-94)~~

~~a. Acquisition, construction, reconstruction, or installation of publicly owned commercial or industrial buildings and structures, and other publicly owned real property equipment and improvements, including public facilities, utilities, and other on-site improvements, including railroad spurs, electrical, gas and telephone services. Such activities may be carried out by the grantee, sub-recipient, or private nonprofit firms. Rehabilitation of privately owned commercial or industrial buildings is eligible under Subsection 040.02.b. or Subsection 051.01. (3-30-07)~~

~~b. A project may include the provision of direct financial assistance to private for-profit businesses including, but not limited to, assistance through grants, loans, loan guarantees, interest supplements, or technical assistance and other forms of support, for any eligible activities to carry out an economic development project, excluding those described as ineligible in Subsection 052.01. In order to ensure that any such assistance does not unduly enrich the for-profit business, an analysis shall be conducted to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project as described in 24 CFR Part 570.482(e) and (f). (3-30-07)~~

~~041.—044. **(RESERVED)**~~

~~045. **SUB-GRANTS TO NONPROFIT ORGANIZATIONS.**~~

~~01. Eligible Activities. A grantee may subgrant ICDBG funds to any of the types of sub recipients specified below, to carry out a neighborhood revitalization or community economic development project. Such a project may include any eligible activity under these rules and ineligible activities listed in Subsection 052.02, but not those described as ineligible in Subsection 052.01. (3-30-07)~~

~~02. Grantee Responsibilities. Grantees are wholly responsible for ensuring that ICDBG funds are utilized by sub recipients in a manner in compliance with the requirements of these rules and the other applicable federal, state or local laws. Grantees remain responsible for carrying out the environmental review and clearance responsibilities. (3-30-07)~~

~~03. Sub-Recipient Eligibility. Sub-recipients eligible to receive grants under Section 045: (3-30-07)~~

~~a. A neighborhood based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit (nonprofit) basis within a neighborhood. An organization is considered to be neighborhood based if the majority of its membership, clientele or governing body are residents of the neighborhood where activities assisted with ICDBG funds are to be carried out. A "neighborhood" is a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents as a neighborhood, or the entire jurisdiction of a unit of general local government which is under twenty five thousand (25,000) population. (7-6-94)~~

~~b. Section 301(d) Small Business Investment Companies. A Section 301(d) Small Business Investment Company is an entity organized pursuant to Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making. (7-6-94)~~

~~c. Local Development Corporations. A local development corporation is: an entity organized pursuant to Title VII of the Headstart, Economic Opportunity and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.); an entity eligible for assistance under Section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696); other entities incorporated under state law whose membership is representative of the area of operation of the entity (including non resident owners of businesses in the area) and which is similar in purpose, function and scope to those specified in Subsection 045.03.a.; or a state development entity eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695). (7-6-94)~~

~~d. Colleges and Universities. An institution of higher education having a demonstrated capacity to carry out eligible activities for the benefit of the grantee. (7-6-94)~~

~~046. ENERGY PLANNING. Activities necessary to the development of comprehensive community wide energy use strategy. (7-6-94)~~

~~047. TECHNICAL ASSISTANCE. ICDBG funds may be used by the grantee (or provided by a grantee to a sub-grantee) to increase their capacity to carry out eligible neighborhood revitalization or economic development activities. Such costs are not included in the ten percent (10%) limitation on administrative and planning costs. (7-6-94)~~

~~048. HABITABILITY OF HOUSING UNITS. Activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily LMI neighborhoods. (7-6-94)~~

~~049. MICRO ENTERPRISES. Provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by: providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises; providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding,~~

~~conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises. (7-6-94)~~

**050. HOUSING ACQUISITION FOR LMI HOMEOWNERS.**

~~ICDBG funds may be used to facilitate and expand homeownership for LMI persons by: subsidizing interest rates and principle amounts for LMI home buyers; directly finance the home acquisition for LMI owner; acquire mortgage guarantees for LMI homebuyers (grantees and grant funds cannot directly guarantee mortgage financing.); provide up to fifty percent (50%) of a down payment for LMI homebuyers; pay reasonable closing costs normally associated with the purchase of a home by a LMI homebuyer. (3-20-97)~~

**051. HOUSING AND COMMERCIAL REHABILITATION AND PRESERVATION ACTIVITIES.**

~~**01. Commercial Rehabilitation.** ICDBG funds may be used to finance the substantial rehabilitation of privately owned existing buildings or structures used for business, commercial or industrial purposes. It includes, but is not limited to, structural and foundation modifications, removal of building code violations, utility improvements (electrical, gas, water, sewer, air, telephone, vacuum), energy efficiency improvements, facade modifications, safety systems integral to the building, loading and unloading facilities which are part of a building, and expansion of the square footage of the building. The term is generally considered to mean improvements which become part of the building. Rehabilitation of a commercial or industrial building owned by a private for profit business may qualify under the "rehabilitation" category only if it is limited to facade improvements of the exterior of the building and/or the correction of code violations. All other improvements must meet the requirements of the "Special Economic Development" category (Subsection 040.02.b.). The amount of ICDBG funding to finance commercial rehabilitation shall be reasonable compared to the value of the building less the value of the land. (See Subsection 040.02.b.) (7-6-94)~~

~~**02. Housing Rehabilitation.** ICDBG funds may be used to finance the rehabilitation and improvements of privately owned buildings for residential purposes, low income public housing and other publicly owned residential buildings. Funds may also be used to assist private individuals and entities, including profit making and nonprofit organizations, to acquire property for residential rehabilitation and rehabilitation for the use or resale for residential purposes. (7-6-94)~~

~~**03. Financial Assistance.** Assistance may be in the form of grants, loans, loan guarantees, interest supplements or other means to pay the costs related to the following activities: (7-6-94)~~

~~**a.** Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and renovation through alterations, additions to or enhancement of existing structures, which may be undertaken singly or in combination; (7-6-94)~~

~~**b.** Loans for refinancing existing indebtedness secured by a residential property rehabilitated with ICDBG funds if such financing is determined to be necessary or appropriate to achieve the community's development objectives; (7-6-94)~~

~~**c.** Improvements to increase the energy efficiency in residential structures through the installation of storm windows and doors, siding, wall and attic insulation; or conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment; (7-6-94)~~

~~**d.** Improvements to increase efficiency of residential water usage through water saving faucets and shower heads, repair of water leaks, etc.; (7-6-94)~~

~~**e.** Financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines; (7-6-94)~~

~~**f.** For residential rehabilitation carried out with ICDBG funds, costs of: Initial homeowner warranty premiums; hazard insurance premiums, except where assistance is provided in the form of a grant; and flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973; (7-6-94)~~

~~g. Cost of acquiring tools to be lent to owners and tenants who will use such tools to carry out rehabilitation; (7-6-94)~~

~~h. The rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937; or (7-6-94)~~

~~i. Renovation of closed school buildings for residential uses. (7-6-94)~~

~~04. **Rehabilitation Services.** Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this Section, under Section 312 of the Housing Act of 1964, as amended, under Section 819 of the Act, or under Section 17 of the United States Housing Act of 1937. These services plus Administrative costs shall not exceed fifteen percent (15%) of the grant. (7-6-94)~~

~~05. **Use of Grant Funds.** A grantee may use grant funds to pay substantial reconstruction of a home, owned and occupied by a LMI family. A grantee may use grant funds to pay substantial reconstruction of a home, owned and occupied by a LMI family, if during rehabilitation construction the need for reconstruction is discovered or where reconstruction is part of a larger neighborhood revitalization effort and the grantee determines that rehabilitation efforts are not sufficient to restore the home and the cost of reconstruction is less than the fair market value of the property after reconstruction is completed. (3-20-97)~~

**023. -- 051. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**053. GRANT APPLICATION PROCESS.**

**01. Grant Application.** The Grant Application generally consists of a Notice of Intent to apply, the Application, and an Addendum. These are submitted to the Department at different times in the application process. (7-6-94)

**a.** Notice of Intent. A one (1) page letter sent to the Department as soon as a community decides to submit a grant application. This is an optional, but strongly recommended, step. It allows the Department to assist the community with eligibility and structuring of the proposed project. (7-6-94)

**b.** Application. The major required document which describes and documents the applicant's proposed project. It contains the information required to document that the proposed project will meet a national objective and consists of eligible activity(ies). The Application is the basis of the Department's and the EAC's review and ranking of the project. (7-6-94)

**c.** Addendum. Additional information required by the Department to further document the project or to fulfill additional federal requirements once the Application has been selected by the Economic Advisory Council. (7-6-94)

**02. Project.** A project shall address a single need and may consist of one (1) or more eligible activities which are to be undertaken with the ICDBG funds and any other funds committed to the project. A project also includes all the benefits which are to result from the related activities and from compliance with all federal and state laws and regulations which are conditions of the grant. The principal activity which directly addresses the problem area shall represent a majority of funds requested; other activities must be incidental to, and in support of, the principal activity. For example, a program which addresses a housing need might include housing rehabilitation as the principal activity. Support activities such as street improvements or demolition must be incidental and clearly in support of the principal activity. (7-6-94)

**03. Funding.** In addition to ICDBG funds, the other funds committed to a project are divided into other government funds, local matching funds, and private funds. Other government funds are from state, federal, or foundation sources provided to the grantee for the project. Local matching funds are defined as cash donations, capital reserves, program income (Section 171), cash resulting from debt financing, local improvement districts, general obligation or revenue bonds, tax levies, land sales or miscellaneous revenue. Local matching funds are generally those funds and contributions raised by the residents of the grantee. Also to be considered as local matching funds are the fair market value of the time of local government crews (force account) working on the project, donations of land, materials, and equipment for the project, waiver of local fees, and volunteer labor. Private funds are from individuals, businesses, or corporations which are spent on private property, but are necessary to the completion of the project and the generation of the benefits. Direct loans to individuals on housing projects will not be considered local match. (4-11-06)

**04. Documentation.** Firm evidence of in-kind contributions of equipment or materials will be considered as cash. The market value of land may be considered as local match if the value of the real estate is documented by appraisal or assessment. Architectural or engineering estimates of labor, materials and equipment should be prepared to determine value of these items. ~~Other documentation such as Bills of Sale, catalogue price lists, retail prices, etc. should be used. The value of a donation or a commitment of land should be documented by appraisals or fair market value.~~ Volunteer labor should be estimated by man hour, types of skills needed and wage rates. Documentation of insurance coverage for volunteers should be included in the application. This documentation should be a letter from the insurance agent of the community or civic group. (7-6-94)( )

**054. -- 060. (RESERVED)**

**061. NOTICE OF INTENT SOLICITED.**

The Notice of Intent to apply shall be submitted in a letter from the Chief Elected Official. Notices for ED projects shall be continuously accepted and reviewed; ~~Notices for SR and PFH shall be submitted following the Application workshops held each year.~~ Submittal is optional, but strongly recommended. First priority for technical assistance and staff travel will be given to those applicants which submit a Notice of Intent to apply. IT projects do not submit a Notice of Intent. (3-20-97)( )

**062. SUBMITTAL OF NOTICES OF INTENT, APPLICATIONS, AND ADDENDA.**

Applications may be mailed, ~~or~~ hand-delivered, or submitted electronically. All Applications and Addenda must be postmarked or dated by a commercial carrier not later than midnight of the announced Application deadline date. Any Application or Addendum not meeting the following closing date criteria will be disqualified and returned to the applicant. An Application and Addendum will be considered to be received on time under either one (1) of the following circumstances: (7-6-94)( )

**01. Sent by Mail or Private Commercial Carrier.** It was sent by mail or private commercial carrier no later than the closing date, as evidenced by a U.S. Postal Service date postmark or by a commercial carrier date. Applicants are responsible for assuring that the U.S. Post Office or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so. (7-6-94)

**02. Hand-Delivered.** Hand-delivered Applications and Addenda will be accepted during the normal working hours. In establishing the date of receipt of hand-delivered Applications and Addenda, reliance will be placed on documentary evidence of receipt maintained by the Department. (7-6-94)

**03. Electronically.** Electronically submitted Applications and Addenda must be submitted by midnight of the deadline date. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. FORMAT.**

~~An~~ The Application and Addendum form and format shall be submitted on eight and one half inch (8 1/2") by eleven inch (11") white paper. It may be printed on both sides of the paper. Maps and larger sheets shall be folded to eight



~~and one-half inch (8-1/2") by eleven inch (11") size. Left and right margins shall be one (1) inch. The text shall be typed single spaced with double spaces between paragraphs. Pages shall be numbered. The types of headings and numbering systems are optional to the applicant. Supporting documents should be noted and placed in an appendix. The original and an electronic Application and the addendum, if required, shall be submitted to the Department of Commerce as prescribed in the ICDBG Application Handbook.~~ (3-30-07)( )

**073. (RESERVED)**

**074. SECTIONS.**

The Application shall consist of the following sections: (7-6-94)

**01. Cover.** The cover shall contain "An application for an Idaho Community Development Block Grant by the \_\_\_\_\_ (City/County) of \_\_\_\_\_ (Name) \_\_\_\_\_ Date: \_\_\_\_\_." (one (1) page) (7-6-94)

**02. Cover Letter.** A cover letter signed by the Mayor or the Chairman of the Board of County Commissioners on official stationery. This is the official letter of application for a grant. (one (1) page) (7-6-94)

**03. Table of Contents.** (one (1) page) (7-6-94)

**04. ICDBG Application Information Form.** Fully completed and signed by the applicant. (one (1) page) (7-6-94)

**05. Threshold Factors.** The first four (4) factors must all be answered in the affirmative before an Application is to be reviewed and ranked. For public facility, housing and downtown revitalization projects an Application shall include Subsections 074.05.a. through 074.05.d. An Addendum, where required, shall include Subsections 074.05.e. through 074.05.g. All other application types must include Subsections 074.05.a. through 074.05.g. (3-30-07)

**a.** The applicant must be an eligible applicant (Section 012). Describe how the applicant meets the eligibility criteria. If this is a joint or in-behalf-of application, describe agreements and arrangements for managing the grant and the project. (7-6-94)

**b.** The project shall be an eligible activity(ies). Describe why the project and the various activities are eligible according to the rules in Section 022. (7-6-94)

**c.** The applicant shall adopt a citizen participation plan and shall conduct a public participation process. Applicants shall submit a copy of the Citizen Participation Plan and results of citizen involvement in developing the project. A copy of the Citizen Participation Plan must be submitted with the Application. An ICDBG may be awarded only if the grantee certifies that it is following a detailed citizen participation plan which: provides for and encourages citizen participation, with particular emphasis on participation of persons of low and moderate income who are residents of slum and blight areas or provides for participation of residents in low and moderate income neighborhoods as defined by the applicant; provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed use of funds; provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including, at least, the development of needs, the review of proposed activities, and review of program performance. Hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for persons with disabilities; provides for a timely written answer to written complaints and grievances, within fifteen (15) working days where practicable; and identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. (3-19-99)

**d.** At least one (1) public hearing is required to permit public examination and appraisal of the Application. Public hearings shall be scheduled in ways and at times to provide for full participation of citizens. The building or facility must be accessible to persons with disabilities. All information presented in the hearings shall also be available, upon request, in a form usable by persons with disabilities. Proper notification shall be given by a public advertisement in a local newspaper no less than seven (7) days prior to the meeting date. The seven (7) days shall be counted beginning the date the advertisement appears and ending the day before the date of the hearing. The notice

shall include: a brief description of the proposed project; the amount of funds being requested; the time and place of the public hearing, including a statement that the hearing will be held in a handicapped accessible facility; notification that both written and verbal comments will be accepted; and a description of the availability of services for persons with disabilities, upon request. It is recommended the applicant also post notification of the public hearing at various public locations and use other media notices of the hearing. At a minimum, applicants shall provide in the minutes of the meeting, evidence the following occurred at the public hearing: The Application and Application Handbook were available for review; the amount of funds available for local community development and housing activities was discussed; the range of activities to be undertaken was presented including community impact and benefit to low and moderate income (LMI) persons; verification that citizen's comments and views on the proposed Application were considered prior to submittal and, if determined appropriate, a description of how the Application was modified; a copy of the public notice, minutes and a list of those attending the public hearing(s); a description of any plans for the project regarding citizen participation, i.e., the formation of a citizen's advisory committee; and a description of any assistance for persons with disabilities requested and provided. (3-20-97)

e. The applicant shall have the administrative capacity to administer the grant. This means having ~~completed~~ ~~started~~ the procurement process for a Department-approved grant administrator in accordance with Section 212. The grant administrator ~~shall~~ ~~should~~ be included in project development and Application writing efforts. (3-30-07)( )

f. The applicant shall have adopted a Fair Housing Ordinance or resolution. This ordinance or resolution must have been adopted and publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Fair Housing Resolution or Ordinance has been adopted, applicants do not have to re-adopt the Resolution or Ordinance. The applicant will be required to show documentation the Resolution or Ordinance was published within the previous twelve (12) month period. (3-30-07)

g. The applicant shall either certify it will follow the Idaho Department of Commerce's Anti-displacement Plan or have adopted an Anti-Displacement and Relocation Plan. If the applicant adopts its own plan, the ordinance or resolution must have been publicly advertised within the twelve (12) month period preceding the Addendum deadline date for public facility, housing and downtown revitalization projects and the twelve (12) month period preceding the application deadline date for senior/community center, imminent threat and economic development job documentation projects. Once the Anti-Displacement and Relocation Plan has been adopted, applicants do not have to re-adopt the Plan. The applicant will only be required to show documentation the Plan was published within the previous twelve (12) month period. (3-30-07)

**06. General Project Description.** This is the critical section of the Application. It should include enough information for the reviewer to clearly understand the community, its needs, the project, and how the grant will help to solve the community problem. The information in each ranking section should substantively expand upon the project description. The narrative should succinctly describe the following items: a description of the community as to size, location and economy; a thorough assessment of all the community's needs and how the proposed project is a priority in comparison with the other needs addressed. The applicant should also include a description which discusses how the existing condition came about, the number of people affected, and the seriousness of the problem(s); the particular project that is being proposed shall be described in detail. Describe the project, the various components, anticipated costs, schedule of activities, maps showing the location of the project ~~to the community~~ ~~(detailed enough to locate it by car)~~ and a map of the boundaries of the project area. This description shall be detailed enough that it can be used to write a contract scope of work; describe the benefits of the project, how it solves the identified need, and how it will enhance the community and its economy. Provide a demographic profile of the persons to benefit. ~~This shall include gender, minority status, persons with disabilities, and female head of household.~~ Describe how the project meets the state objectives of the ICDBG program (see Sections 000, 010, and 011); and if program income is expected to be generated, a re-use plan must be developed according to Section 175. (3-30-07)( )

**07. ICDBG Budget Form Fully Completed by the Applicant.** (one (1) page) (7-6-94)

**08. Assurances.** The applicant shall sign the Assurances Form certifying that it will comply with the following federal laws and regulations: National Environmental Policy Act of 1969; Civil Rights Act of 1964 Pub.L



88-352; Civil Rights Act of 1968 Pub.L 90-284; Age Discrimination Act of 1975; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended and the implementing regulations at 49 CFR Part 24; Rehabilitation Act of 1973, Section 504 “Handicapped Accessibility”; Housing and Community Development Act of 1974 as amended Pub. L 93-383; Davis-Bacon Act (40-USC 276a--5); Historic Preservation Act; Anti-Lobbying Certification; Excessive Force Certification; and Section 106 of the Housing and Urban Recovery Act of 1983, certifying they will: minimize displacement and follow a residential anti-displacement and relocation assistance plan, affirmatively further fair housing, provide citizen participation, not use assessments or fees on low and moderate income owner occupants to recover capital costs of ICDBG-funded public improvements; Prohibition of Use of Assistance For Employment Relocation, Section 588 of the Quality Housing and Work Responsibility Act of 1998 Pub. L 105-276. (one (1) page). (3-30-01)

**09. Review and Ranking Narrative.** The applicant shall address each point category in the order given in the review and ranking section of the applicable grant category; ~~referenced below. If a particular point category is not applicable or not selected, it should be indicated.~~ (7-6-94) ( )

- ~~a. Economic Development Grants:~~ (4-11-06)
- ~~i. Infrastructure (Section 096):~~ (7-6-94)
- ~~ii. Downtown Revitalization (Section 097):~~ (7-6-94)
- ~~b. PFH (Sections 083 through 087) and SR (Section 101) Grants:~~ (7-6-94)
- ~~i. Program Impact and Eligible Activity Point Form:~~ (4-11-06)
- ~~ii. National Objectives:~~ (4-11-06)
- ~~iii. Project Categories:~~ (4-11-06)
- ~~iv. Advisory Council Points Narrative:~~ (4-11-06)

**10. Additional Information from Applicant (Appendix).** Maps, letters of support, technical studies and appropriate background documentation should be placed in this section and bound into the Application (no page limit). (7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**081. PUBLIC FACILITIES AND HOUSING GRANTS.**

Public Facilities and Housing Grants refers to provision of local government utilities or facilities or the rehabilitation of housing for low to moderate income persons. ~~Applicants for these grants shall compete in one (1) of the two (2) categories: public facilities or housing.~~ PFH grants may be funded to a maximum of five hundred thousand dollars (\$500,000). The PFH selection process consists of two (2) major components, the Application and the Addendum. See Section 092 entitled “Award Process” for details of the award process. See Subsection 135.02 of these rules for “Tag-on For Accessibility For Persons With Disabilities.” (3-19-99) ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**084. PROGRAM IMPACT.**

Three hundred ~~twenty~~ (320) points. Some or all of the points may be granted in each subcategory. The local financing factors, which represents the largest portion of the total number of points each applicant may receive, is intended to ensure that the best overall proposals are selected for funding. The score on this factor is determined by evaluating how effectively local funds are used in comparison with other applicants. The Department may require an applicant to provide supplemental financial information to clarify the local ability to finance all or a portion of a

proposed ICDBG project. The applicant should provide evidence or documentation of the nature, amount and/or value of match committed to the project. Housing projects should (if match is not committed) provide the names of the agency, staff person and program(s) which may provide match, a description of the program and a time table for the match approval process. (4-11-06)( )

**01. Percentage of ICDBG Dollars in Total Project (~~fifty thirty~~ ~~(530)~~ points).** All Applications will be ranked by percentage of ~~Community Development (ICDBG)~~ funds requested divided by total project costs. Total project costs are the total funds committed from all sources - federal, state, local and private funds. The applicant must clearly identify the other funding sources with dollar amounts from each. The rankings shall be divided into four (4) equal categories. The lowest ICDBG percent (%) receives the most points and the highest ICDBG percent (%) receives the least points. Points will be assigned according to the following schedule: (3-19-99)( )

- a. First Quartile -- ~~fifty thirty~~ ~~(530)~~ points. (3-19-99)( )
- b. Second Quartile -- ~~thirty twenty~~ ~~(320)~~ points. (3-19-99)( )
- c. Third Quartile -- ~~fifteen ten~~ ~~(150)~~ points. (3-19-99)( )
- d. Fourth Quartile -- zero (0) points. (7-6-94)

**02. Percentage of Local Matching Funds (sixty (60) points).** All Applications will be ranked by the percentage of local matching funds divided by the total of local match and ICDBG funds. The highest percentage of local dollars will receive the highest points. See Subsection 053.03 for definition of local match. The rankings shall be divided into four (4) equal categories. The highest local match percentage (%) receives the most points and the lowest local match percentage (%) receives the least points. Points will be assigned according to the following schedule: (4-11-06)

- a. First Quartile -- sixty (60) points. (7-6-94)
- b. Second Quartile -- forty (40) points. (7-6-94)
- c. Third Quartile -- twenty (20) points. (7-6-94)
- d. Fourth Quartile -- zero (0) points. (7-6-94)

**03. ICDBG Dollars per Person (fifty (50) points).** The ratio of total persons directly benefited by the project, compared to ICDBG funds requested (ICDBG dollars per person) shall be ranked and divided into quartiles. The lowest ICDBG dollars receives the most points and the highest ICDBG dollars receives the least points. The points shall be assigned to the ratio of ICDBG dollars per person as follows: (7-6-94)

- a. First Quartile -- fifty (50) points. (7-6-94)
- b. Second Quartile -- thirty (30) points. (7-6-94)
- c. Third Quartile -- fifteen (15) points. (7-6-94)
- d. Fourth Quartile -- zero (0) points. (7-6-94)

**04. Local Matching Funds per Person (sixty (60) points).** The ratio of total persons directly benefited by the project, compared to local matching funds shall be ranked and divided into quartiles. The Department may request supplemental financial data from any applicant to determine local ability to finance a proposed project or clarify a community's financial situation. The Department may take into consideration a community's ability to contribute local matching funds in determining all rating and ranking points. The highest local funds per person receives the most points and the lowest local funds per person receives the least points. The points shall be assigned to the ratio of local matching funds per person as follows: (4-11-06)

- a. First Quartile -- sixty (60) points. (3-19-99)

- b. Second Quartile -- forty (40) points. (3-19-99)
- c. Third Quartile -- twenty (20) points. (3-19-99)
- d. Fourth Quartile - zero (0) points. (7-6-94)

**05. Eligible Activity Priority Ranking (one hundred (100) points).** Each eligible activity (Sections 022 through 051) is assigned a priority point factor. The applicant should list the activities and the ICDBG funds budgeted to each. These points shall be assigned to an Application based upon the percentage of the total ICDBG funds committed to each activity and multiplied by the priority points assigned to each. The total of the priority points so calculated is the total of the priority points for the Application. Health and safety-related projects are defined as sewer, water, fire protection facilities, medical facilities, nursing homes, streets, and other similar projects. Social service facilities are defined to include community centers, senior centers, libraries, assisted housing, shelter care, senior housing, auditoriums, cultural facilities, recreation facilities, and parks.

<b>TABLE 1 -- "Eligible Activity Priority Ranking"</b>	
Acquisition of Real Property	<del>One hundred</del> <b>Seventy five (75)</b> points
<del>Acquisition of Real Property for Housing Projects</del>	<del>Fifty (50)</del> points
Public Facilities and <del>Improvements—Health and Safety Related Infrastructure</del>	One hundred (100) points
<del>Public Facilities and Improvements—Housing Related</del>	<del>Seventy five (75)</del> points
<del>Public Facilities and Improvements—Social Service Related</del>	<del>Fifty (50)</del> points
Engineering - Architectural	One hundred (100) points
Code Enforcement	Fifty (50) points
Clearance and Demolition	<del>Ten</del> <b>Fifty (50)</b> points
Removal of Architectural Barriers	<del>Fifty</del> <b>One hundred (100)</b> points
Rental Income Payments	Zero (0) points
Disposition of Property	Ten (10) points
Public Services	Zero (0) points
Completion of Urban Renewal Projects	Zero (0) points
Relocation Payments	Twenty-five (25) points
Planning Activities	Zero (0) points
Administration Activities	One hundred (100) points
Grants to Nonprofit Community Organizations	Zero (0) Points
Grants to Nonprofit Community Organizations for Housing Projects	Seventy-five (75) points
Energy Planning	Zero (0) points
Housing Rehabilitation	Seventy-five (75) points

~~(4-11-06)~~ ( )

**085. NATIONAL OBJECTIVES.**

Two hundred sixty (260) points. The Application must qualify in one (1) of two (2) national objective categories: benefit to low and moderate income persons or the prevention or elimination of slum and blight. If the Application

does not qualify in at least one (1) category it will be declared ineligible for review and ranking. The Application will not be considered further. The applicant must choose only one (1) of the two (2) categories in which to compete. (7-6-94)

**01. Benefit to Low and Moderate Income (LMI) Persons (two hundred sixty (260) points).** To qualify in the LMI category the applicant shall demonstrate at least fifty-one percent (51%) benefit to LMI persons. (3-20-97)

**a.** The applicant shall show that the project shall principally benefit a majority of LMI residents of the project area. Benefit is shown only if it meets one (1) of the following criteria: the activity shall be carried out in a neighborhood service or benefit area consisting of fifty-one percent (51%) LMI persons and provide services to such persons; the activity shall involve facilities designed for use predominantly by persons of LMI; or the activity shall improve permanent, residential structures which will be occupied by LMI households upon completion. See Section 016 for more information. (7-6-94)( )

**b.** All benefits LMI beneficiaries shall be verified by an appropriate source(s). Numbers shall be documented either by census data or a reliable survey. This material shall be verifiable by the Department of Commerce Multiplier effects or ratios shall not be considered in assigning benefit points because these numbers do not show direct benefit. The cost of planning, management, and administration shall not be included in calculating benefit of LMI persons. (7-6-94)( )

**c.** Applicants shall provide additional ~~documentation that low and moderate income persons are receiving direct benefits of the program as determined by the following:~~ beneficiary information and data as instructed in the Application Handbook. (7-6-94)( )

~~i. A narrative description with maps showing the location of the project area (census tract or enumeration districts must also be included when identifying these areas); (7-6-94)~~

~~ii. The total number of households and persons in the project area; (7-6-94)~~

~~iii. The total number of persons shown to be LMI in the project area; (7-6-94)~~

~~iv. The percentage of LMI persons in the project area. (7-6-94)~~

~~v. Identification of all the needs of LMI persons in the project area including the scope and magnitude of these needs; (7-6-94)~~

~~vi. The map(s) must also outline the area where there is a concentration of these needs; (7-6-94)~~

~~vii. The total number of "minority households" in the project area and their needs, ie. The term "minority household" is defined as one where one (1) or more adults are Black, Hispanic, Asian and Pacific Islanders, American Indian, or other non white. If minority household information is not available from a survey, then Census data on the number of minority persons sixteen (16) years and over is acceptable; (7-6-94)~~

~~viii. The total number of households where persons with disabilities reside in the project area. "Household" is defined as one in which there are one (1) or more persons who are physically or mentally disabled. If information is not available from a survey, then Census data on the number of disabled persons sixteen (16) years and over is acceptable and a description of LMI citizen participation during the data gathering process. (3-19-99)~~

**d.** LMI Need points for Public Facility projects will be determined according to the following standards. Critical Need receives the full eighty (80) points. Critical is defined as existing (officially identified) violations of federal or state health or safety regulations. Moderate Need is an officially identified problem related to health and safety regulations, but the situation is not in violation of any regulation. Moderate Need receives sixty (60) points. Potential Need is related to solving a current situation that would become a violation if left uncorrected. Potential Needs receives forty (40) points. Community Need is a general improvement not related to health and safety, but is a major improvement in community services and infrastructure. Community Need receives twenty (20) points. Applicants for fire safety projects can receive up to eighty (80) points in the need category if they can

document how the proposed project is directly related to efforts to comply with the state’s currently adopted fire code or National Fire Protection Association Standards - fifty (50) points; maintenance and personnel training is conducted and documented - fifteen (15) points; the community participates in the Fire Incident Reporting System to the State Fire Marshal’s office - fifteen (15) points. (3-30-01)

e. Identification of Impact (~~eighty sixty~~ 860 points). The applicant shall submit the following: specific identification of the project activities that will be undertaken to meet identified LMI needs. A distinction must also be made regarding direct and indirect benefits; a discussion of project impact in providing long-term permanent solutions to alleviate the need(s) identified above; identify procedures that are or will be developed to measure impact throughout the project; and describe and provide documentation of the process used to identify the LMI needs. Documented health and safety needs are awarded higher points. Applicants for fire safety projects can receive up to ~~eighty sixty~~ 860 points in the impact category if they document; ~~(3-30-01)~~ ( )

i. How the proposed project ~~addresses elements in their Fire Suppression Rating Schedule affecting their~~ affects response time, recruitment of volunteers, and fire insurance rating - ~~eighty sixty~~ 860 points; ~~(3-30-01)~~ ( )

~~ii. Bonus points shall be given to applicants whose fire inspectors have completed the certification program and have current certification status through the State Fire Marshal’s office five (5) points; and (3-30-01)~~

~~iii. If the applicant documents a fire safety education program is implemented in the community five (5) points. (3-30-01)~~

**02. Housing Need and Impact.** (7-6-94)

a. Identification of Need (eighty (80) points). An applicant shall develop a housing needs assessment to determine the need for a housing grant. Information to be collected about the community shall include population and growth, family size, the number of elderly, persons with disabilities, minority persons, and family income. Housing information collected shall be total number of units, number of rental units, age of housing, vacancy rates, overcrowding, number of substandard units in the community, and the number of each type of housing, i.e. owner, rental, institutional and seasonal. The applicant shall address how the proposed housing project will meet the needs outlined in the housing conditions study. The maximum points will be assigned to those housing projects meeting the most need as outlined in the housing needs assessment. (3-19-99)

b. Identification of Impact (~~eighty sixty~~ 860 points). ~~(3-19-99)~~ ( )

i. In the housing impact area, points would be awarded on the level of income the proposed project would target, based on the following formulas: (3-19-99)

(1) Percent of eighty percent (80%) of ~~medium~~ median income x forty (40) = ~~(3-19-99)~~ ( )

(2) Percent of fifty percent (50%) of ~~medium~~ median income x sixty (60) = ~~(3-19-99)~~ ( )

(3) Percent of thirty percent (30%) of ~~medium~~ median income x ~~eighty sixty~~ 860 = ~~(3-19-99)~~ ( )

ii. Applicants will be required to submit a written management plan showing how the housing units would be allocated to the different income levels and show how the proposed housing matches the needs outlined in the need category. Housing market data will also be required for this category. (3-19-99)

~~e03.~~ **Low and Moderate Income Percentage Points (one hundred (100) points).** Points will be assigned according to the percentage of LMI in the project area. They are:

TABLE 2 -- “Percentage of LMI in Project Area”	
Percentage	Points
0 - 50.00%	zero (0)

Percentage	Points
51.00 - 60.00%	twenty (20)
60.01 - 70.00%	forty (40)
70.01 - 80.00%	sixty (60)
80.01 - 90.00%	eighty (80)
90.01 - 100.00%	one hundred (100)

(7-6-94)

**034. Prevention or Elimination of Slum and Blight (two hundred ~~sixty~~ **forty** (2**40**) points).** To qualify in the Slum and Blight category, the applicant shall receive at least one hundred (100) total points by demonstrating that the proposed project will have a direct impact on the elimination or prevention of slum and blight conditions. In evaluating impact, the information described below shall be considered (see Slum and Blight definition, Section 020). (7-6-94)(    )

**a.** Provide the following community data: location of the project area including a narrative description and map(s) showing the boundaries of the area; and an official declaration by the governing body that the area is an "Area of Slum and Blight." (7-6-94)

**b.** Identify need (one hundred thirty (130) points). Describe the nature and seriousness of existing conditions/needs in the project area. References to published engineering studies or surveys or letters from appropriate local agencies shall be included. Use maps to locate the conditions and their relationship to each other. The applicant shall describe the nature and seriousness of the need as it exists in the following areas: the number, location, and type of deteriorating structures present in the project area; the unsafe/unsanitary conditions that exist in the structures and area; the infrastructure and site improvements that are deteriorating (i.e., streets, sidewalks, parking lots, utilities, driveways, fences and landscaping); the danger to life and/or property that exists from fire, hazards or other causes; or the condition of the property that impairs economic growth in the community by being an economic or social liability. (7-6-94)

**c.** Identify Impact (one hundred ~~thirty~~ **ten** (1**30**) points). Specify how project activities will eliminate or prevent conditions of slum and blight. Identify the impact of the proposed project in providing permanent solutions to alleviate the identifiable conditions. Identify the procedure that is or will be developed to measure impact throughout the project. (7-6-94)(    )

**086. -- 089. (RESERVED)**

**090. PROJECT CATEGORIES.**

Two hundred and twenty (220) points. PFH Applications shall address each of the categories below. The project description and its benefits should be discussed in previous sections. This section is a measure of the preparedness of the project and the community to undertake the project. To earn points, the applicant must demonstrate that the appropriate actions, procedures, agencies, permits, financing and inspections to initiate and complete the project were discovered and show how much has been completed. The object is to have well thought out projects which will then be quickly executed if funded. The items identified in the following categories must be related to each other. (3-30-01)

**01. Planning, Previous Actions and Schedule (one ~~two~~ hundred ~~and eighty~~ **twenty** (1**820**) points).** According to the categories listed below, the applicant shall describe and document the process used to plan the project and describe the components of the project. The completeness of the process and project detail earn more points. (4-11-06)(    )

**a.** Design Professional (twenty (20) points). A maximum of twenty (20) points will be awarded if the



applicant has issued an RFP and completed a design professional selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, proof of published notice if applicable, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

**b.** Grant Administration (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed the administrator selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, solicitation process, and completed evaluation rating sheets must be submitted to receive full points. (4-11-06)

**c.** Plan/Studies (~~twenty~~ thirty (230) points). A maximum of ~~twenty~~ thirty (230) points will be awarded in this category if the applicant documents a plan or a study has been completed which includes a survey of the existing condition of the system or facility, develops and screens alternatives to enable the system to meet future needs, selects a recommended alternative, and evaluates the potential impact of the project on the environment. For pre-fab buildings, provide a letter from local building officials that the building meets state of Idaho building, electrical, and plumbing codes. Include additional information by project type: (~~4-11-06~~) ( )

**i.** Water and sewer system projects. A conditional approval issued by DEQ on the facilities study or the project's specification and drawings. (4-11-06)

**ii.** Health care facility projects. A letter of intent submitted to the Idaho Bureau of Facilities Standards describing the proposed scope of work. Provide a copy of the letter and any response from the Bureau of Facilities Standards. (4-11-06)

**iii.** Road and transportation system projects. Conditional approval of construction plans by the Idaho Transportation Department or local highway district. (4-11-06)

**iv.** Housing projects. Project meets the community's comprehensive plan and zoning ordinance. Also, completed a financial performance and management plan. (4-11-06)

**v.** Fire or EMT station projects. A public works or design professional facilities review. The review shall include survey of existing condition of the building (if applicable), an analysis of costs including rehabilitation costs versus new construction, site location consideration including environmental issues, existing building problems, and the need for the size of the facility. (4-11-06)

**d.** Environmental Scoping (ten (10) points). A maximum of ten (10) points will be awarded if the applicant or sub-recipient has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook and mailed out environmental information request letters before submission of application. (4-11-06)

**e.** Agency Viability (~~thirty-five~~ (305) points). A maximum of ~~thirty-five~~ (305) points will be awarded in this category if the applicant documents the following per project type: (~~4-11-06~~) ( )

**i.** Sewer or water projects. Completion of ICDBG financial viability worksheet with the utility rate reviewed by at least one (1) of the following: The USDA Rural Development, Boise State University Environmental Finance Center, the Rural Community Assistance Corporation, or the Idaho Rural Water Association. (4-11-06)

**ii.** Health care, transportation, housing, fire/EMT, or other projects. The applicant's or sub-recipient's viability will be based on having the following components: A lawful governing body, completion of ICDBG financial viability profile, a stable funding source and positive cash flow, and capital improvement and facility management plans. (4-11-06)

**iii.** Youth center projects. Projects must assist youth ages six (6) to eighteen (18) in developing skills to overcome challenges and become responsible leaders. The applicant or sub-recipient must provide information on management and operation of the center, outreach activities, a cost analysis of rehabilitation versus new construction and document that local operating funds are committed. (3-30-07)

**f.** Property Acquisition (~~twenty~~ thirty (230) points). A maximum of ~~twenty~~ thirty (230) points shall be

awarded if the applicant or sub-recipient has achieved project site control. (4-11-06)( )

i. The applicant or sub-recipient has ownership of the property including easements or right of way permits. Identify if there are existing buildings on the property and whether or not businesses, individuals, or farms will be displaced and provide documentation of site control; or (4-11-06)

ii. If property (land, buildings, rights of way, easements) is not secured but is identified on a plat map five (5) points will be awarded. Identify if individuals or businesses, including farms will be displaced. (4-11-06)

g. Funding Commitments (forty-five (405) points). A maximum of forty-five (405) points will be awarded if one hundred percent (100%) of match funds are committed to the project. A commitment letter must be included with the application addendum. A support letter is not a commitment. If match is a bond, provide documentation the bond has passed and identify who will buy it. (4-11-06)( )

h. Schedule (five (5) points). A maximum of five (5) points will be awarded in this category if the dates to start and complete construction have taken into account weather conditions, other funding availability, environmental mitigation issues, real estate site control, and bidding time frame. (4-11-06)

i. Administrative Capacity (fifteen twenty-five (+25) points). A maximum of fifteen twenty-five (+25) points will be awarded in this category. (4-11-06)( )

i. ICDBG project track record and general stability of applicant and sub-recipient. Review may include financial audit reports, board make-up, staff turnover and recall elections (five (5) points). (4-11-06)

ii. Completion of Section 504 Self Evaluation and Transition plan. Submit the transition plan and the name of the ADA coordinator to certify which elements have been completed (five (5) points). (4-11-06)

iii. Document ~~that efforts to Affirmatively Further~~ Fair Housing ~~Accessibility Standards have been adopted either separately or inclusively with the most current building code utilized by the applicant~~ (five fifteen (15) points). (4-11-06)( )

**02. Cost Analysis (forty (40) points).** Cost estimates for the project should be an accurate and realistic analysis of the administrative, legal, accounting, engineering or architectural services, property acquisition, construction and closeout costs. The various sources of funding should be assigned to the appropriate parts of the project. In order to receive points, construction costs will need to be: (4-11-06)

a. Identified by a licensed design professional's cost estimate within four (4) weeks of the application due date; (4-11-06)

b. Completed Project Cost Estimate. Estimate should reflect: (4-11-06)

i. Acquisition costs including appraisals, land, relocation, and closing costs; (4-11-06)

ii. Construction costs including divisions 1 - 16 as described in the most recent MASTERFORMAT, Davis Bacon wage rate, overhead, profit, contingency, bonding, permits; (4-11-06)

iii. Design professional fees including design fees, construction administration, and reimbursable fees; (4-11-06)

iv. Grant administration fees including writing and administration; (4-11-06)

v. Soft costs including soil studies, market study, environmental; and (4-11-06)

vi. Financing expenses. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**



**096. REVIEW AND RANKING NARRATIVE FOR BUSINESS EXPANSION PROJECTS.**

The following are the review and ranking narrative requirements for those projects which assist business expansion through the provision of infrastructure and creation of jobs. The following minimum criteria must be included in the application by the application deadline in order for staff to review and rank the project and recommend it to the Economic Advisory Council for consideration. (3-30-01)

**01. Minimum Criteria. (7-6-94)**

**a.** The project must meet the national objective of benefiting LMI persons through job creation. Fifty-one percent (51%) of all the new jobs created or retained must be held by or made available to a member of a low and moderate income family. (LMI as defined in Section 016). Family income must be certified by the employee at time of hire and must be able to be verified or may be documented through a Department of Commerce screening referral agency. (3-19-99)

**b.** The applicant must certify compliance with applicable federal circulars A-87, A-110, and A-122 and meet the necessary assurances as listed in Subsection 074.08 as applicable. (4-11-06)

**c.** A public hearing shall be held on the Application in accordance with Subsection 074.05.d. (7-6-94)

**d.** The project may qualify as a Special Economic Development Project under Subsections 040.02.a. and 040.02.b. if the project meets the Public Benefit Standards described in 24 CFR Part 570.482 (e) and (f). (3-30-07)

**e.** Attach an eight and one-half inch (8-1/2") by eleven inch (11") map showing the location of the proposed project in the community. Attach a site plan of the proposed project showing existing and proposed improvements both business and infrastructure; existing and proposed land uses in the surrounding area and natural features and conditions on the site and nearby. (3-20-97)

**f.** Attach a brief analysis of the business to be assisted, including the market for the product/services to be produced, the business' position in the market, and the financial and managerial capabilities of the business(es) to be assisted. This should also include financial statements and balance sheets for the business(es) to be assisted indicating sales, income, and net position for the prior three (3) years, and the names and experience of senior managers of the business. (4-11-06)

**g.** Attach a letter of commitment from the business(es) stating their agreement to be part of the grant project, their ability to accomplish their expansion, their understanding of and compliance with all applicable federal regulations, their understanding of and compliance with the payback liability if the jobs creation does not meet federal standards; and their willingness to make available all records and information necessary to document all jobs created by completing and signing the Grant Assistance Agreement and Certification of Compliance with Grant Conditions. (4-11-06)

**h.** Attach a description of the type and number of all the jobs to be created, a calculation of fulltime equivalents (FTE), and a beginning payroll of the business(es) at the location of the proposed project, a detailed description of the hiring process and any training to be provided. The information should include both current job information and the job creation projected for two (2) years beyond the completion of the grant funded construction. If training is necessary, a training plan and schedule outlining the responsibilities must be included in the application. A description of the quality of new and retained jobs shall be included. A description of the median annual income and fringe benefits package for new or retained jobs shall be provided. (4-11-06)

**02. Ranking Criteria (one thousand (1,000) points possible). (7-6-94)**

**a.** Direct new or retained jobs, in fulltime equivalents (FTE's), created within two (2) years of grant construction completion. Net new jobs are those created as a result of the ICDBG, over and above employment at the business site prior to the grant, and which do not include relocated jobs from the assisted business in the same labor market area. Retained jobs are those that would be lost without the ICDBG assistance. A job creation cost of more than thirty thousand dollars (\$30,000) ICDBG per job will not be considered. If jobs are not being created or retained,

a project cannot be funded.

(3-29-10)

**b.** Quality of New or Retained Jobs (one hundred (100) points). Points in this category are assigned based upon a comparison of the full time equivalent (FTE) wages or salaries created (excluding benefits, and the average county **starting** salary as determined by the **most recent quarterly** Idaho Department of Commerce **survey**. To convert part time or seasonal positions, take the total number of hours of employment created for a given pay rate and divide by one thousand five hundred sixty (1,560). If the average county wage exceeds the state average wage; comparison with the state average will be used. The grantee will be awarded points based upon the percentage of FTE's exceeding the state or county average salary. The formula is: Percentage of jobs above state or county average salary x one hundred (100) = Wage Quality Points. ~~(4-11-06)~~( )

**c.** Fringe Benefits (one hundred (100) points). The businesses creating or retaining jobs as a result of ICDBG assistance shall document their fringe benefit plans. Points will be given as follows: fifty (50) points for an employer funded health plan and fifty (50) points for an employer funded pension plan. The business must provide both to receive full points. (4-11-06)

**d.** Business Risk and Management (zero (0) to one hundred ~~twenty-five~~ **forty** (125**40**) points). The probability of achieving the projected jobs and payroll within one (1) and two (2) years, as determined by the Department. The determination may be made on the basis of: the business plan and schedule, the financial position and a credit analysis of the business; the performance record of senior management of the business project; and other criteria reasonably required by the Department. Projects receiving less than ~~seventy-five~~ **ninety** (75**90**) points in this category will be eliminated from further consideration. ~~(4-11-06)~~( )

**e.** Planning, Schedule and Cost (one hundred and seventy (170) points possible). Describe planning efforts to enhance economic development. A detailed and reliable cost estimate and a project construction schedule is required of all Applications. Cost analysis and schedule will receive equal emphasis. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

**i.** Planning (~~fifty~~ **one hundred ten** (**5110**) points). Describe planning efforts to identify and detail all steps related to the implementation of the entire project. Identify all participants in the process. Describe all the partnerships and relationships involved in implementing the project. This will include local government actions, the business actions, other agency and utility actions, real estate, environmental, legal, financial and grant considerations. ~~(4-11-06)~~( )

**ii.** Schedule (~~fifty~~ **fifteen** (**150**) points). A detailed and reliable schedule of all actions identified in the plan. Also a separate grant funded project construction schedule is required of all Applications. ~~(4-11-06)~~( )

**iii.** Cost (~~fifty~~ **twenty-five** (**250**) points). Detailed cost estimates of all actions, permits, construction, real estate, etc. should be prepared by an engineer or architect. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. ~~(4-11-06)~~( )

**iv.** Environmental Scoping (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook. (4-11-06)

~~**f.** *Minority Benefit (fifteen (15) points). Applicants for job creation projects that are for business expansion or retention shall receive minority points if the business documents minority hiring on their current payrolls. If the percentage of minority participation is equal to or greater than the county in which they are locating, they shall receive full points.* (4-11-06)~~

~~**gf.** Local **Investment Leverage Match** (maximum of one hundred (100) points). The total of all local match will be divided by the total of all local match plus the ICDBG amount requested to determine the percentage of local match in the project. This percentage will then be multiplied by one hundred (100) to determine the point value. Applicants shall state if there is a Revolving Loan Fund (RLF) available in their region and, if so, describe what attempts have been made to secure funds from the RLF for the project. Program Income from previous grants to be used in this project may be considered as local match. ~~(4-11-06)~~( )~~

~~h.g.~~ Distressed Areas (twenty (20) points). Maximum points will be given if the project is located in a historically underutilized business (HUB) zone or other similar qualifiers. (4-11-06)( )

~~h.h.~~ Existing Idaho Business (twenty (20) points). To qualify for points, a business must have a significant Idaho presence. (4-11-06)

~~h.j.~~ Private Leverage (one hundred (100) points). The points in this category will be calculated by dividing the total of all private investment provided by the business in the project by the ICDBG amount requested and multiply it by one hundred (100). The business' private investment is the capital facilities, real estate and site development costs. Applicants shall provide documentation on the status of private investment, i.e. financing approvals. Payroll and start-up costs are not included in this calculation. (4-11-06)

~~h.i.~~ Activities (twenty-five (25) points). Points will only be awarded for the percentage of ICDBG dollars committed to the acquisition, construction, or reconstruction of public infrastructure (Section 024); and for publicly-owned commercial building acquisition and/or rehabilitation for the purpose of assisting a business or businesses. (4-11-06)

~~h.k.~~ Grant Management (twenty-five (25) points). ~~If the grant funded activities are managed by the grantee, twenty five (25) points will be awarded. Grantee management includes management under contract with a Department approved Grant Manager~~ Previous track record of grantee and/or experience of grantee and grant administrator. (4-11-06)( )

~~h.l.~~ Economic Advisory Council Evaluation (two hundred (200) points). The EAC will evaluate each Application on the basis of overall value, including its ability to make a significant impact on the Idaho economy and the commitment of the community to the project. The EAC evaluation process shall be prescribed in the ICDBG Application Handbook. (4-11-06)

## **097. REVIEW AND RANKING OF DOWNTOWN REVITALIZATION.**

**01. Introduction.** Downtown Revitalization occurs only as merchants and landowners and other community representatives implement a series of actions which take advantage of community strengths and the economic and market forces operating in their community. An Idaho Community Development Block Grant program is only one (1) of the resources which can assist a downtown revitalization process. Therefore, the grant Application must be reviewed against the background of the total revitalization efforts. The following areas are reviewed by staff to evaluate the project. (3-19-99)

**02. Organization (seventy-five (75) points).** This is a measure of the strength and depth of the local commitment to downtown revitalization. Obvious problems and lack of cooperation will detract from the points. The Application should describe how the community is actively organized to plan and implement a downtown revitalization process. At the center of the process there should be a take-charge steering committee representing the major community actors, such as merchants, city officials, local economic development organizations, utilities, and banks. Active subcommittees shall undertake components of the process in promotion, design, and economic restructuring. Other areas include infrastructure, finance, historic preservation, architecture, and various regulations. The process will be unsuccessful without the participation of, communication with, and cooperation from, various local, state and federal governmental agencies, ~~such as the Department of Transportation, Health and Welfare, Post Office, BLM, Forest Service, City Hall, County Courthouse, School Board, Highway Districts, Sewer, Water, and Fire Districts and Irrigation Districts. Participation of major companies, particularly those which drive the local economy, along with the utilities and banks, is also critical to the process.~~ (4-11-06)( )

**03. Assessments (seventy-five (75) points).** This is a measure of the accuracy, completeness and comprehensiveness of each of the assessments which underlie the implementation plan. Knowing and understanding the market forces which support a community's downtown is the foundation of any revitalization effort. Consequently, an analysis of the local economy's market or trade area is critical to determine the effort's direction. Only with this information can plans be made to select the mix of goods and services that can be supported and to decide the nature of the improvements to infrastructure, regulations, buildings, and promotional campaigns. The downtown area may no longer be a retail center and maybe some other use is appropriate. This should be identified

and the plans accordingly developed around this activity. Therefore, the Application must contain the background studies that were conducted to assess the local economic forces, market conditions, demographics, and sales volumes; the present conditions of streets and sidewalks, sewers, water and storm drain systems, and traffic patterns; the mix of land uses, conditions of buildings and vacancy rates, physical design, including accessibility for persons with disabilities, and environmental conditions. To receive full points, a community assessment must include market analysis which includes a survey of the primary trade areas, customer market and business and property owner information. (4-11-06)

**04. Implementation (two hundred (200) points).** The Implementation Plan, by its very nature, needs to be action-oriented, with resources, time frames, and assigned responsibilities for each activity. The Plan should begin with an estimate of the economic potential of the downtown and the effect that revitalization will have upon the businesses and services. Next should be the goal statement(s) of the revitalization effort. Goals should be stated in general terms with implementation activities in specific, measurable terms. Suggested goal statements include marketing, promotion, regulatory, cleanup, and infrastructure. The Implementation Activities should be set out in detail with the responsible party(ies) identified, a completion time frame established, and the needed resources identified. Since revitalization will take a partnership of the public and private sectors to accomplish the goals, the activities may be divided into public and private categories. Points will be assigned to the Implementation Plan as follows: (7-6-94)

**a.** ~~Action Plan Preparedness (fifty one hundred (\$100) points).~~ This is a measure of ~~the detail of the implementation plan~~ completeness of downtown revitalization plan. The detail of a downtown revitalization plan should include ~~specific actions with assigned responsibilities and time frames for completion~~ goals, action items, timelines, costs, visioning, and assessment. (7-6-94)( )

**b.** ~~Architectural/Engineering Plans~~ Design Professional Activities (fifty (50) points). This will measure the extent of architectural design or engineering procurement undertaken and to determine the scope of the grant project and estimate costs. (7-6-94)( )

**e.** ~~Implementation Time Frame (fifty (50) points).~~ ~~This will measure whether reasonable time frames have been determined for the grant project and that all the major actions and accomplishments have been identified, including those necessary for the implementation of the grant.~~ (7-6-94)

**d.c.** Previous Amount Accomplished (fifty (50) points). This is a measure of all other action items in the implementation plan, how many have been started, and the progress towards completion. (7-6-94)

**05. Slum and Blight (two hundred (200) points).** This is a threshold which shall be met for the Application to be eligible for review. An Application will be disqualified if, in the opinion of the Department, the project does not meet the definition of Slum and Blight, (Section 020) or does not receive more than one hundred twenty-five (125) points in this category. The geographic boundaries of the downtown area shall be reasonable and officially designated. The conditions within the area shall be described and shall include the condition of all the infrastructure, the conditions of buildings and structures, and the economic forces which are causing the conditions of slum and blight. The Application shall describe the need for the proposed ICDBG project and the impact the project will have on the conditions of slum and blight. This will include the overall impact on the downtown revitalization efforts and the long-term impact on the community. Some project activities may, more appropriately, meet another national objective. If so, it should be described in detail and documented according to the standards for that national objective. (7-6-94)

**a.** Need and impact (one hundred (100) points). This is a measure of the proposed area's need to prevent or eliminate conditions of slum and blight. It is also a determination of the project's impact on the conditions of slum and blight. A project must address the critical need of the slum and blighted area, have an impact on the economics of the downtown area, and have a measurable impact. The criteria for measuring the impact of the project on the conditions of slum and blight must be described in measurable terms, such as increase in private investment, establishment of new businesses or business expansions, sales growth, improvement in the appearance and value of property, reduction in vacancy rates and increase in housing units. This includes the economic impact and community impact. (7-6-94)

**b.** Relationship to overall plan (one hundred (100) points). This is a measure of: how the proposed

grant project is related to the other actions and needs of the Implementation Plan; whether it is foundational to the revitalization of the downtown economy or it is peripheral to the needs of the economy; and how logically sequenced the activities being proposed are in relation to the other activities. If another national objective is included in the justification for some of the activities, include the description here and it will be judged upon its need and impact as described in this section. (7-6-94)

**06. The ICDBG Project (three hundred fifty (350) points).** The Application shall generally describe the eligible activities being proposed for funding. Any combination of eligible activities may be considered in designing the project. The eligible activity(ies) should be located on a detailed map. The relationship of the block grant project to the other implementation activities must be clear. Any matching funds shall be committed with the sources and schedules identified. All the other collateral implementation activities should be discussed and the funds expended documented. The Application shall describe the following items: (4-11-06)

**a.** Project Local Match (one hundred (100) points). The amount and percentage of “local match” firmly committed to the grant project shall be described. Evidence of commitment shall be provided by letter or agreements. Applicants shall state if there is a Revolving Loan Fund (RLF) available in their region and, if so describe what attempts have been made to secure funds from the RLF for the project. Program income from previous grants to be used in this project may be considered as local match. This total local cash match will then be added to other local match i.e. revenue bonds, in-kind match, etc. The total of all local match will then be divided by the total of all local match plus the ICDBG amount requested to determine the percentage of local match in the project. This percentage will then be multiplied by one hundred (100) to determine the point value. ~~The percentage times the points (one hundred (100)) will determine the amount of points assigned.~~ (4-11-06)( )

**b.** Project Other Match (~~seventy-five~~ **one hundred (75100)** points). The percentage of other funds committed to the proposed ICDBG project from private and other state and federal sources. The percentage shall be calculated by dividing the total of the other sources by the sum of total project costs which is all match plus the ICDBG request. The percentage times the points (~~seventy-five~~ **one hundred (75100)**) will determine the amount of points assigned. (4-11-06)( )

~~**c.** BID/LID Commitment (fifty (50) points). A maximum of fifty (50) points will be awarded to communities who have established a formal business improvement district or local improvement district prior to submission of the application addendum. (4-11-06)~~

~~**d.** Related Implementation Expenditures (sixty (60) points). The percentage of private investment or related expenditures spent on the other implementation plan action items compared to the ICDBG funds being requested. Amounts spent within one (1) year prior to the grant Application submittal and those committed to be spent during the year following the submittal of the Application may be counted for this section. The percentage shall be calculated by dividing the total of the other funds by the sum of other funds plus the ICDBG request. The percentage multiplied by the points (sixty (60)) will determine the amount of points assigned. (4-11-06)~~

~~**e.** Long-term Program Involved (~~sixty-five~~ **ninety (6590)**). The use of grant funds to leverage a payback mechanism so that funds will sustain the downtown redevelopment efforts over the long term. For example, this can be done through various types of loans, fees, bonds and tax increment financing. improvement districts, urban renewal, or resort city tax. The pool of funds is to be dedicated to the downtown area. (4-11-06)( )~~

**07. Economic Advisory Council Points (one hundred (100) points).** The EAC, after reviewing the staff’s ranking and recommendation, shall award its points based upon both the information presented and the Application. The EAC may award all or some of the points depending upon its opinion that the grant will promote the revitalization of the downtown economy. Projects which only fix a problem but do not leave the downtown in a better economic condition would receive fewer points. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**099. COMMUNITY CENTER AND SENIOR CITIZEN CENTER GRANTS.**



**01. Community Center Grants.** Community Center Grants are part of a competitive application process which is separate from the PFH project grants in the annual grant selection process. They are only for Community Centers, not for other facilities such as shelter homes, nursing homes, and housing. Only cities or counties may apply. CC grants will be funded to a maximum of one hundred ~~one hundred~~ **fifty** thousand dollar (\$10**5**0,000). ~~For construction of a new Community Center and on case by case basis; the staff may recommend for the EAC's consideration additional funding above the one hundred thousand dollar (\$100,000) grant limit, but not to exceed a total grant of one hundred fifty thousand dollars (\$150,000). Consideration of additional funds will be based upon whether the existing center has kitchen facilities and the new facility will serve other significant community needs or groups; architectural plans and cost estimates are reasonable and well planned to suit the documented needs of community or neighborhood residents.~~ See Section 107 entitled Award Process, for details on the award process.

(7-1-98)( )

**02. Senior Citizen Center Grants.** Senior Citizen Center Grants, which address the need for community centers for senior citizen groups, are part of a competitive application process which is separate from the PFH project grants in the annual grant selection process. They are only for Senior Citizen Centers, not for other facilities such as shelter homes, nursing homes, senior housing and other geriatric facilities. Only cities or counties may apply. SR grants will be funded to a maximum of one hundred ~~one hundred~~ **fifty** thousand dollar (\$10**5**0,000). ~~For construction of a new Senior Center and on a case by case basis; the staff may recommend EAC's consideration of additional funding above the one hundred thousand dollar (\$100,000) grant limit, but not to exceed a total grant of one hundred fifty thousand dollars (\$150,000). Consideration of additional funds will be based upon whether the existing center is a designated meal site serving three (3) or more meals per week, the new facility will serve other significant community needs or groups; architectural plans and cost estimates are reasonable and well planned to suit the documented needs of the senior and with the supporting advice of the regional office on aging.~~ See Section 107 entitled Award Process, for details on the award process.

(7-1-98)( )

**03. Public Parks Grants.** Public Parks Grants are part of competitive application process which is separate from the PFH project grant in the annual grant selection process. They are only for public parks, not for recreation facilities. Only cities and counties may apply. PK grant will be funded to a maximum of one hundred fifty thousand dollars (\$150,000).

( )

**034. Eligible Uses.** The following are eligible uses of Community Center, ~~or~~ Senior Citizen Center, and Public Park Grants: construction of facilities; purchase of facilities; rehabilitation of facilities; purchase of essential fixtures (a fixture is defined as equipment that is permanently attached to the building); and removal of architectural barriers for the handicapped.

(7-1-98)( )

**045. Local Match Committed to the Project.** Match can be in the form of dollars, land, building materials and fixtures, volunteer labor, and waived fees. In the case of new construction or purchase and rehabilitation, the appraised or assessed value of donated real estate can be part of the match. Value of an existing facility cannot be used as match when the grant is for rehabilitation and/or expansion of the facility. Firm commitments of donated money, material and/or real estate must accompany the Application.

(7-1-98)

**056. Priorities in Funding.**

(7-6-94)

**a.** For Community Centers, the first priority for funding will be remodeling existing facilities to meet Title III Standards, to meet building codes, to provide adequate handicapped access and facilities and to provide adequate kitchen facilities for serving community or neighborhood residents. The second priority for funding will be construction of a new facility to replace an existing center. This will be considered only when the applicant demonstrates that the existing facility cannot be restored to adequate facility standards or that the cost of rehabilitation exceeds the cost of new construction, or that the facility is too small for the number of persons who presently use the facility and expansion costs of the existing structure exceed new construction costs; or the construction of a community center facility is in a community where no facility now exists; but only where other Community Center facilities are not available, and if adequate local operating funds are committed.

(7-1-98)

**b.** For Senior Citizen Centers, the first priority for funding will be remodeling existing facilities to meet Title III Standards, to meet building codes, to provide adequate handicapped access and facilities and to provide adequate kitchen facilities for serving the current senior citizen membership. The second priority for funding will be: construction of a new facility to replace an existing center. This will be considered only when the applicant

demonstrates that the existing facility cannot be restored to adequate facility standards or that the cost of rehabilitation exceeds the cost of new construction, or that the facility is too small for the number of Seniors who presently use the facility and expansion costs of the existing structure exceed new construction costs; or the construction of a Senior Center facility in a community where no facility now exists; but only where: other Senior Center facilities are not available; and if adequate local operating funds are committed. (7-1-98)

c. For Public Parks, the first priority for funding will be for cities or counties who are area-wide low-to-moderate income. The second priority for funding will be improving existing park facilities to meet playground equipment standards, ADA compliance, and to provide adequate facilities and fixtures for serving community and neighborhood residents. The last priority for funding will be construction of a new park. New park construction will only be considered when the applicant can demonstrate there is sufficient need and demand for the park. Existing or new priority will be given to parks whose service area (typically one-half (½) mile radius) is lower income when compared to other neighborhoods or areas of the community. ( )

**100. APPLICATION.**

The Application shall identify the eligible components ~~of the physical plant~~ of the center or park and define which items are critical, necessary, or ~~nice to have~~ potential concerns for the health and safety of persons using the facility. The projects with the highest needs and the greatest preparedness to proceed would be recommended for funding. (7-1-98)( )

**01. Notice of Intent.** (See Section 061) (7-6-94)

**02. Deadline.** CC, ~~and~~ SR, and PK Applications will be due on the first Friday of March, June, or September each year, as specified in the Application Handbook. The Application shall be submitted according to Section 062. The EAC will review the Applications and make funding recommendations at the April, July, or October Council meeting. (7-1-98)( )

**03. Information to Be Included.** The Application shall contain the information required by Section 074. The general project description (Subsection 074.06) shall contain the additional information described below. The Application shall be on the forms provided by the Department and according to the format described in Sections 072 and 073. The Application shall also address the center's geographic service area, the number of beneficiaries in the service area, other demographic data including minority and handicapped status, and the needs and impact of the project upon the lives of the residents, neighborhood, or senior citizens. (7-1-98)

**04. Restrictions.** An applicant is not qualified to apply for a CC, ~~or~~ SR, or PK grant if it has a currently funded community center, ~~or~~ senior citizen facility grant, or public parks grant, the funds of which are not eighty percent (80%) drawn down as shown on the Department's records as of the last date for accepting Applications. (7-1-98)( )

**05. The General Project Description Shall Address the Following Information.** (7-6-94)

**a. Health Services.** If the center is a designated meal site, provide information of the number of meal days weekly and the number of meals served weekly, monthly, and annually. This information should include any outreach services. Other health services provided at the center should be described. Also, the average number of education activities scheduled per month should be included. Any provision or plans to provide adult day care should be described. (7-1-98)

**b. Building Information.** The Application shall describe the building's physical condition including the square footage of the building, roof condition, exterior conditions, foundation conditions, parking and floor and other structural conditions. (7-6-94)

**c. Interior Building.** The conditions of the interior of the center should be described, including electrical and plumbing conditions, handicapped access to building and interior spaces, handicapped bathrooms, heating and air conditioning equipment conditions, energy efficiency and weatherization of building, kitchen and food storage conditions and fire safety conditions. (7-6-94)

**d. Match Committed.** The amount of local funds and in-kind match that the center can commit to the



project should be described and documented. (7-6-94)

e. Planning of the Project. The planning efforts for the center or park should be described. This may include the efforts to determine the needs of the center or park, and the solicitation of community and local government support. Items such as Health and Safety inspections, architectural or engineering designs, Area Agency inspections and recommendations, schedules of project construction and cost estimates may be included.

(7-1-98)( )

f. Park Information. The Application should describe the park's physical condition including size, apparatus or playground fixtures for older children, playground equipment, section for pre-school children, open space for informal play, surface area for court games, field for group games, splash pad, porticos, restrooms, picnic areas, sidewalks, parking, and ADA accessibility. ( )

06. **Presentation.** Following selection of the Application by the Department staff. According to Section 065. (7-6-94)

**101. REVIEW AND RANKING PROCESS.**

The Application shall be reviewed according to the following point categories and shall be based upon the information submitted and any additional information requested by the Department. (one thousand (1,000) points possible). (7-6-94)

01. **Physical Conditions (three hundred fifty (350) points).** Points will be assigned to the needs of the center or park based upon the number of needs and the urgency of the needs. Department staff shall, upon review of the documentation and descriptions in the application, determine a rating from one (1) to ~~three~~ nine (9) based upon the criticalness and urgency of each of the following problems. The ratings will be totaled and ranked. Those Applications ranking the highest will receive the most points. The Application should also include a facility plan or building assessment.

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
Identified in Project Description Narrative	Identification of Problem	Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/ Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
		Critical <del>30</del>	Urgent <del>25</del>	<i>Nice to Have</i> <u>Potential Concern</u> 1
	Physical Conditions: Structural Problems			
	Roof			
	Walls			
	Foundation			
	Floors			
	Weatherization			
	Expansion for adult day care			
	New Center			

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/ Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical 39	Urgent 25	Nice to Have Potential Concern 1
	Other			
	Interior Problems:			
	Asbestos/lead based paint			
	Bathrooms			
	Access for persons with Disabilities			
	Electrical/plumbing/ lighting			
	Heating/air conditioning			
	Fire safety			
	Unusable space			
	New Center			
	Unusable space			
	Other			
	Kitchen and Food Storage:			
	Health inspection			
	Capacity of dry storage			
	Capacity of cold storage			
	Equipment			
	New Center			
	Other			
	Access for Persons with Disabilities			
	Parking			
	Entry			
	Bathrooms			
	New Center			

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/ Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical <del>39</del>	Urgent <del>25</del>	Nice to Have <u>Potential Concern</u> 1
	<u>Parks</u>			
	<u>Playground fixtures for older children</u>			
	<u>Playground fixtures for preschool children</u>			
	<u>Open space for informal play</u>			
	<u>Surface area for court games</u>			
	<u>Fields for group games</u>			
	<u>Splash pads</u>			
	<u>Porticos</u>			
	<u>Restrooms</u>			
	TOTALS:			
		ASSIGNED RANKING		

(3-30-07)( )

02. ~~Planning and Schedule~~ **Project Implementation** (two hundred (200) points). Points will be assigned according to the apparent effort made to determine the needs of the center, the nature of the problems, the solutions, and the costs of the project and a realistic schedule for implementing the project. (7-6-94)( )

a. ~~Pre-Planning~~ (fifty forty (540) points). This is a measure of the effort ~~made to quantify the problems through building code inspections, health inspections, and architectural and engineering review~~ to structure, develop, design, and complete preliminary construction approval steps. (7-6-94)( )

b. ~~Project Planning~~ **Design Professional** (fifty twenty (520) points). This is a measure of the effort made to ~~coordinate all of the various agencies that may be involved in funding and planning the project. Also included is all relevant information that all grant responsibilities and requirements have been included in the planning~~ issue an RFP and complete a design professional selection process. This process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, proof of published notice if applicable, and completed evaluation rating sheets must be submitted. This would include vendors or suppliers. (7-6-94)( )

c. Schedule **Grant Administration** (fifty twenty (520) points). This is a measure of the effort ~~made to schedule all the project activities, including the different grant requirements and contractors that may be involved~~

issue an RFP and complete the administrator selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, solicitation process, and completed evaluation rating sheets must be submitted. (7-6-94)( )

**d. Costs Schedule (fifty five (50) points).** This is a measure of the effort to ~~determine reasonable cost estimates for the various elements of the project~~ schedule all the project activities including the different grant requirements and contractors that may be involved. This would also include vendors for suppliers. (7-6-94)( )

**e. Costs (twenty (20) points).** This is a measure of the effort to determine reasonable cost estimates for various elements of the project. ( )

**f. Environmental Scoping (ten (10) points).** This is a measure of the effort made to complete a Field Notes Checklist as prescribed in the ICDBG Application Handbook and mailed out environmental information request letters before submission of Application. ( )

**g. Property Acquisition (twenty (20) points).** A measure of the effort of the applicant or sub-recipient to achieve project site control. ( )

**h. Administrative Capacity (sixty five (65) points).** A measure of ICDBG project track record and general stability of applicant and sub-recipient. Review may include financial audit reports, board make-up, staff turnover and recall elections, completion of Section 504 Self Evaluation and Transition plan, and documented efforts to Affirmatively Further Fair Housing. ( )

**03. Benefits (one hundred fifty (150) points).** (7-6-94)

**a.** Activities Provided (one hundred (100) points). This is a measure of how well the center or park is meeting the needs of its members, neighborhood, or community. It is based upon the number and quality of activities and services the center or park is providing on an annual basis. Service days will be calculated by taking the number of days an activity or service is offered during the course of the month multiplied by twelve (12). Activities can include health, recreational, social, educational, and transportation services. Quartile points ~~will~~ may be assigned to this area.

TABLE 6 - "Ranking By Quartiles"	
Highest Quartile	One hundred (100) points
Second Quartile	Sixty (60) points
Third Quartile	Thirty (30) points
Fourth Quartile	zero (0) points

(3-30-01)( )

**b.** Low and Moderate Income and Minority Outreach Activities (fifty (50) points). This is a measure of existing or proposed efforts made to include low and moderate income and minority participation in the center's or park's activities. (7-1-98)( )

**04. Match (one hundred (100) points).** Cash and in-kind donations which are committed to the project shall receive points according to the percentage committed up to the total points in the category of match. (4-11-06)

**a.** The sixty (60) points for cash match shall be assigned on a quartile basis by taking the percentage resulting from the division of cash match by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of cash match in the project. (3-30-01)

**i.** First Quartile -- sixty (60) points. (3-30-01)

- ii. Second Quartile -- thirty (30) points. (3-30-01)
- iii. Third Quartile -- fifteen (15) points. (3-30-01)
- iv. Fourth Quartile -- zero (0) points. (3-30-01)

**b.** The forty (40) points for in-kind match shall be assigned on a quartile basis by taking the percentage in-kind match divided by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of in-kind match in the project. (3-30-01)

- i. First Quartile -- forty (40) points. (3-30-01)
- ii. Second Quartile -- twenty (20) points. (3-30-01)
- iii. Third Quartile -- ten (10) points. (3-30-01)
- iv. Fourth Quartile -- zero (0) points. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. AWARD PROCESS.**

The Department shall review the Applications submitted with the EAC during its April, July, or October meeting. The EAC, after reviewing the Applications, and staff recommendations, will assign the points and recommend Applications to the Governor for funding and standby status. ~~(3-30-07)~~( )

**108. IMMEDIATE THREAT GRANTS.**

Five percent (5%) of the annual ~~Community Development~~ CDBG allocation or three hundred thousand dollars (\$300,000), whichever is less, shall be reserved to fund activities which will alleviate an imminent threat to public health or safety which requires immediate resolution. Each grant amount will not exceed one hundred thousand dollars (\$100,000). Only imminent threat grant Applications which meet the criteria in Section 109 will be presented to Economic Advisory Council for funding consideration. ~~(7-6-94)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. SPECIAL ALLOCATIONS -- IMMEDIATE THREAT URGENT NEED.**

Special Urgent Need Allocations shall be administered by the department when: (3-20-97)

**01. Presidentially Declared Disaster.** The threat is determined to be a Presidentially Declared Disaster; and (3-20-97)

**02. Appropriation Allocated.** A special Idaho Community Development Block Grant appropriation has been allocated to the Department through the ~~Idaho~~ HUD Community Development Block Grant Program. ~~(3-20-97)~~( )

**112. SPECIAL ALLOCATIONS - APPLICATION.**

**01. Information to Be Included.** Information to be included shall be consistent with Subsection 109.02. (3-20-97)

**02. Special Urgent Need Grants.** Special urgent need grants under this program can be submitted by eligible applicants when conditions in Section 111 exist. (3-20-97)

**113. SPECIAL ALLOCATIONS - IMMEDIATE THREAT DETERMINATION.**

**01. An Imminent Threat/Urgent Need.** An Imminent Threat/Urgent Need is defined *in Section 021* ~~(3-20-97)~~ ( ) by HUD.

**02. Documentation.** Communities requesting an imminent threat grant shall contain all information shown in Subsections 110.02.a., 110.02.b., and 110.02.d., 110.03 to 110.04. (3-20-97)

**114. -- 115. (RESERVED)**

**116. SPECIAL ALLOCATIONS - REVIEW PROCESS.**

If staff, through reviewing the project, find that the applicant meets the criteria in Section 110, the Application may be recommended to the EAC for review. (7-6-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**118. TECHNICAL ASSISTANCE.**

To assist communities and applicants in their planning efforts and discourage uncoordinated piecemeal approaches to solving community problems, one percent (1%) of the annual *Community Development* CDBG allocation shall be set aside for technical assistance. ~~(4-11-06)~~ ( )

**119. -- 134. (RESERVED)**

**135. ACCESSIBILITY TAG-ON FOR PERSONS WITH DISABILITIES FUNDING.**

**01. Additional Activity.** An applicant may include in their PFH or ED application as additional activity to improve the accessibility of public buildings for persons with disabilities, if the applicant meets all of the following conditions: (3-19-99)

- a. The applicant has adopted a Section 504 Transition Plan; (3-19-99)
- b. The applicant's total grant request does not exceed the maximum grant amount allowed for PFH or ED grants; (3-19-99)
- c. The applicant matches the ICDBG access funds requested with *an equal amount of* local matching funds; ~~(3-19-99)~~ ( )
- d. The grant funds requested for this activity does not exceed ten thousand dollars (\$10,000); (3-19-99)
- e. And the applicant can show previous progress in implementing the Transition Plan. (3-19-99)

**02. Separate Description and Cost Estimate.** The applicant shall provide a separate description of the handicapped accessibility items to be improved and a separate cost estimate. The activities shall be included in the general project budget and schedule. (7-6-94)

**136. -- 151. (RESERVED)**

**152. GRANT AWARD.**

**01. Funding Allocations.** Each year the Department will receive an allocation from the Department of Housing and Urban Development. This allocation is derived from the formula contained in 42 USC, Sec. 5301, the Housing and Community Development Act of 1974, as amended. The allocation shall be generally divided in the following manner to establish target amounts for decision making by the Economic Advisory Council (EAC): first, the amount specified in 24 CFR 570.489 (see Subsection 004.01) shall be reserved for the Department's administrative costs; second, one percent (1%) of the total shall be reserved for Technical Assistance; third, five

percent (5%) or three hundred thousand dollars (\$300,000), whichever is less, of the total allocation shall be set aside for Imminent Threat (IT) grants; fourth, ~~six~~ ten percent (~~6~~10%) or ~~six~~ nine hundred thousand dollars (~~\$6~~900,000) whichever is less, of the total allocation, shall be set aside for Community Center (CC), ~~or~~ Senior Citizen Center (SR), or Public Parks (PK) grants; fifth, any program income, recaptured funds, or carryover funds from the previous fiscal years shall be added to the remainder; and finally, of the remainder, fifty percent (50%) shall be reserved for Public Facilities or Housing (PFH) grants and fifty percent (50%) for Economic Development (ED) grants. These targeted amounts may be more or less than the actual amount funded in each category depending on the needs and requests identified in the applications submitted and may shift according to Subsection 152.02. ~~(3-29-10)~~(    )

**02. Shifting of Funds.** The above allocation divisions are to establish target amounts for decision making by the Economic Advisory Council (EAC). This division shall be made for the January EAC meeting. These targets may be modified at any time by the Department Director with the advice of the EAC depending on the needs and requests identified in the applications submitted. If in any quarter there are surplus funds in the ED category, the Department Director, with the advice of the EAC, may shift funds back to the PFH, ~~or~~ CC, and SR, or PK category to fund standby projects. Otherwise, surplus funds not awarded to ED projects in a quarter shall be carried into the succeeding quarter ED set-aside. ~~(3-30-07)~~(    )

**03. Standby Applications.** At its quarterly meeting in April of each year, the Economic Advisory Council (EAC) may recommend PFH, ~~or~~ CC, and SR, or PK Applications for funding even though not enough funds are available to fund the project(s). These Applications become "standby projects." Standby projects shall be eligible for funding should additional funds become available or surplus funds exist in the ED category. At any subsequent quarterly meeting, the Advisory Council may review and recommend a standby project to the Governor for funding. Standby status shall continue through the fourth quarterly meeting. Any standby projects not funded ~~shall~~ automatically may be invited to submit an Addendum for the next Fiscal Year, thus bypassing the Application stage of the application process. However, the Application must remain eligible and must continue to meet all requirements of the program rules. The standby applicant shall update its Application during the Addendum process. ~~(7-1-98)~~(    )

**04. Termination of Project Selection for Funding.** (7-6-94)

**a.** If, during the period between the award of a grant and signing of a grant contract, a project loses its viability, its status of being selected for funding may be terminated by the Department. The Department shall, by letter, notify the applicant that in the judgment of the Department, the applicant's project is no longer viable and that the applicant has a clearly stated period of time no less than fourteen (14) days to demonstrate the project's viability. If viability cannot be demonstrated within the stated period of time the award of the grant status shall be considered terminated and the funds be made available for the next standby project. (7-6-94)

**b.** After a grant contract has been executed, the Department shall periodically evaluate the progress of the project. If, at any time, the project loses viability and/or cannot be completed as described in the Application, the Department shall, by letter, notify the grantee that the grant contract shall be terminated within a clearly stated period of time of no less than fourteen (14) days from the date of the letter. The grantee may, within the stated period of time, demonstrate substantial progress on the project and request the Department revoke the termination. If viability cannot be demonstrated within the specified amount of time, the grant shall be considered terminated. (7-6-94)

**c.** Loss of viability will be defined to include: the inability to secure the other project financing; the lack of due diligence to pursue the implementation of project requirements; the lack of local coordination with all funding and regulatory agencies; the inability to develop agreements necessary to manage the cash flow and ownership of the project where several different entities are involved in the project; and the inability to complete a project of the same general size and benefits as presented in the application. (7-6-94)

**05. Excessive Funds.** In the event a project can be completed for less than the grant amount, the difference between actual project costs and the grant amount shall be reserved by the Department for standby projects, or added to the total of the next fiscal year allocation for distribution. The Department shall amend the grant contract to reflect the reduced costs. In extraordinary circumstances the excess funds may be used for an eligible activity which further enhances the project as described in the Application. Before the Department decides to allow the additional activity, the grantee must demonstrate the activity will provide an equal or greater benefit than the original project; it will increase the benefits to low and moderate income persons, it will be completed within the



original time frame, and the additional activity will be completed with the excess funds. The grantee must also show completion of the original project, its objectives and benefits. (7-6-94)

**06. Amendment of Project.** A funded project as described in the Application shall not be changed without prior approval from the Department Director. Any amendment of the project shall be reviewed to determine if the project will retain its competitive ranking in the Application review and ranking system. Any amendment shall provide equal or greater benefits than the original project. In unusual circumstances, the Department Director may approve a grant amendment increasing the grant amount, provided unobligated funds are available. In unusual circumstances the Department Director may waive the ten percent (10%) limitation on administrative costs when, in the opinion of the Department, the complexity of the project warrants an increase. (7-6-94)

**07. Allowable Costs.** Once an applicant has been invited to submit an Addendum and prior to the effective date of a grant contract an applicant submitting an Addendum may obligate and spend out of local funds for the purpose below. If awarded a grant and after the effective date of the grant contract, the grantee may be reimbursed for these costs provided such locally funded activities are undertaken in compliance with the program requirements (including but not limited to procurement, financial, acquisition, environmental and the ten percent (10%) limitation on administrative costs). Other project costs shall not be incurred until the Special Terms and Conditions of the contract are completed by the grantee and the funds released by the Department. (See Section 080.) (7-6-94)

**a.** Planning, Design and Administration. Procure and proceed with administrative and architectural or engineering services, adopting the Fair Housing Resolution and the Anti-Displacement Plan, and having public hearings. (7-6-94)

**b.** Project Costs, such as: preliminary and final Engineering Design, preliminary and final Architectural Design, conducting the Environmental Assessment, and completing procedural requirements for acquisition, but not the cost of the property. (7-6-94)

**08. Audit Requirements.** All ICDBG projects shall be audited annually or biannually in accordance with Sections 50-1010 and 31-1701, Idaho Code, the Single Audit Act of 1984, the implementing regulations in OMB Circular A-133, and all applicable federal audit standards, and other applicable state laws. Audits shall include any management letters associated with the audit. The audit shall be submitted to the Legislative Auditors Office within thirty (30) days of completion. Grantees shall require sub-grantees to provide audits conducted according to applicable federal and state laws, regulations and standards. The grantee shall have these audits reviewed as part of the grantee's audit. This review shall be commented and noted in the audit report. This review shall opine that sub-grantees are in compliance with the applicable program laws, regulations, contracts, and standards. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. LEAD BASED PAINT.**

**01. Abatement of Lead Based Paint.** Any applicant or grantee proposing to rehabilitate housing or structures constructed or substantially reconstructed prior to 1978 shall take measures to abate - as far as practicable - lead-based paint hazards. Such measures shall be in accordance with the Lead-Based Paint Poisoning and Prevention Act as amended and Title I of the Community Development Act of 1974 as amended. (7-6-94)

**02. Housing.** Housing shall be defined as any structure designed for occupation by or occupied by children of six (6) years old or less. This includes such uses as day care centers, nurseries, playgrounds, pre-schools and residential uses etc. (7-6-94)

**03. Methodology.** Any lead-based paint abatement and disposal shall be by current state-of-the-art methods approved by the *Division of Environmental Quality* **Environmental Protection Agency**. (7-6-94)( )

**04. Environmental Review.** The lead-based paint hazard shall be determined as part of the environmental review. Abatement shall be considered as part of the project and is an eligible grant expense. (7-6-94)

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

**38.03.01 - RULES GOVERNING GROUP INSURANCE**

**DOCKET NO. 38-0301-1501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 67-5761(b), 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 are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9, pages 290–292](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jennifer Pike, Administrator, Office of Group Insurance, (208) 332-1865.

DATED this 8th Day of December.

Robert L. Geddes, Director  
Department of Administration  
650 W. State Street, Suite 100  
P.O. Box 83720  
Boise, ID 83720-0024  
Phone: (208) 332-1824  
Fax: (208) 334-2307

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2015.

**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 67-5761, 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 16, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, 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:

Revises the definition for eligible active employee, adds definitions for seasonal employee and part-time temporary employee and removes obsolete definition.

**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 addition of the definitions confers a benefit to the industry by clarifying the rule and eliminating confusion for HR staff and employees by conforming the language in the rules to the language used in the insurance contracts.

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

No fee or charge is being changed or imposed through this rulemaking.

**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 fiscal impact from the rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule change will provide conformity with 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:

No documents are being incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Keith Reynolds at (208) 332-1826.

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 23, 2015.

DATED this 10th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0301-1501**

**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~~ who is not classified by their employer as a seasonal employee or a part-time temporary employee. (3-29-10)( )

**a. Seasonal Employee.** An employee in a position for which the customary annual employment is six (6) months or less. ( )

**b. Part-Time Temporary Employee.** An employee who is expected, at the time of hire, to work twenty (20) hours or more per week but less than thirty (30) hours per week, and whose term of employment is not expected to exceed five (5) consecutive months. ( )

**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.** A child up to the age of twenty-six (26) of an eligible active employee or an eligible active employee's spouse. (7-1-14)

**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.** A child up to the age of twenty-six (26) of an eligible retiree or an eligible retiree's spouse. (7-1-14)

**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, 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. (3-21-12)

**c.** A person receiving benefits from a state of Idaho retirement system who has at least twenty thousand eight hundred (20,800) credited state service hours in a state of Idaho retirement system, and who is not Medicare eligible. (3-21-12)

**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)~~

~~**10. Medicare Eligible.** A person who is age sixty-five (65) or older and qualifies to receive Medicare. (3-29-10)~~

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

**38.05.01 - RULES OF THE DIVISION OF PURCHASING**

**DOCKET NO. 38-0501-1501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 67-5717(11), 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 are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 5, 2015 Idaho Administrative Bulletin, [Vol. 15-8, pages 119 through 123](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Bill Burns, Administrator, (208) 332-1610.

DATED this 3rd Day of September, 2015.

Bill Burns, Administrator  
Department of Administration  
650 W. State St., Room 100  
P. O. Box 83720  
Boise, ID 83720-0003  
Phone: (208) 332-1610  
Fax: (208) 334-2307

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

**EFFECTIVE DATE:** The effective date of the temporary rule is June 6, 2015.

**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 67-5717(11), 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 19, 2015.

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 term “purchasing authority” is used in the rules revised by the 2015 legislative session. The term “purchasing activity” remains in the rules where revisions were not approved. This temporary and proposed rule provides a consistent definition for both terms and blends the revised and unrevised rules. This rulemaking establishes a definition for the terms “purchasing activity” and “purchasing authority.”

**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 2015 Legislature accepted only a few sections in a proposed global revision to IDAPA 38.05.01. The partial revision resulting from this action created an unintended ambiguity in the use of the term “purchasing authority.” This temporary and proposed rulemaking defines the term and resolves the ambiguity created by the Legislature’s partial revision of IDAPA 38.05.01.

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

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a temporary rulemaking was required.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Bill Burns, Administrator, (208) 332-1610.

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 26, 2015.

DATED this 29th Day of June, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0501-1501**

**011. DEFINITIONS.**

- 01. Acquisition.** The process of procuring or purchasing property by the state of Idaho. (3-15-02)
- 02. Administrator.** The administrator for the division of purchasing. The administrator is the chief buyer. (3-15-02)



- 03. Agency.** All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction. (3-15-02)
- 04. Alternate.** Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)
- 05. Bid.** A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an invitation to bid. (3-15-02)
- 06. Bidder.** A vendor who has submitted a bid or quotation on specific property. (3-15-02)
- 07. Brand Name or Equal Specification.** This means a specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-15-02)
- 08. Brand Name Specification.** This means a specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-15-02)
- 09. Buyer.** An employee of the division of purchasing designated as a buyer, contract administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing activity. (3-15-02)
- 10. Component.** An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities. (3-15-02)
- 11. Concession Services.** The granting by the purchasing activity of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-15-02)
- 12. Consultant Services.** This means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-15-02)
- 13. Contract.** Contract means any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract shall also include any amendments mutually agreed upon by both parties. (3-15-02)
- 14. Contractor.** A bidder or offeror who has been awarded an acquisition contract. (3-15-02)
- 15. Director.** The chief officer of the department of administration. (3-15-02)
- 16. Division.** The division of purchasing of the department of administration as established by Section 67-5714, Idaho Code. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. (3-15-02)
- 17. Document.** When used in these rules, may include electronic documents. (3-15-02)
- 18. Equal.** Property that meets or exceeds the quality, performance and use of the brand, model or

specifications in the invitation to bid, request for proposals or request for quotation. (3-15-02)

**19. Equipment.** Items of personal property that have a normal useful life expectancy or measurable service life of two (2) or more years. (3-15-02)

**20. Formal Sealed Procedure.** Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)

**21. Goods.** Items of personal property including concession services, not qualifying as equipment, parts or supplies. (3-15-02)

**22. Information Technology Property.** Includes, but is not limited to, all present forms of computer hardware, computer software or services used or required for automated data processing, computer related office automation or telecommunications. (3-15-02)

**23. Invitation to Bid.** Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-15-02)

**24. Lowest Responsible Bidder.** The responsible bidder whose bid conforms in all material respects to the invitation to bid or request for proposals and reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price. (3-15-02)

**25. Offeror.** A vendor who has submitted a proposal in response to a request for proposals for property to be acquired by the state. (3-15-02)

**26. Open Contract.** A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to procure or purchase specified property under the terms and conditions set forth in the contract. (4-7-11)

**27. Person.** Any business, individual, union, committee, club or other organization or group of individuals, not including a state or public agency. (3-15-02)

**28. Procurement.** The process of obtaining property for state use by lease, rent or any manner other than by purchase or gift. (3-15-02)

**29. Professional Services.** Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarian, and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. (3-15-02)

**30. Property.** Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property. Includes concession services and rights to access or use state property or facilities for business purposes. (3-15-02)

**31. Proposal.** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-15-02)

**32. Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)

**33. Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition

- action. (3-15-02)
- 34. Purchase Order.** See also definition of Contract, typically used to acquire property. It is a notification to the contractor to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of a bidder's proposal or bid. (3-15-02)
- 35. Purchasing Activity or Authority.** The division or an agency *delegated that exercising* authority *based on a delegation of authority* by the administrator *for or as provided under these rules to an individual within* the division *or the agency to engage in the conduct of purchasing.* (3-15-02)( )
- 36. Quotation.** An offer to supply property in response to a request for quotation and generally used for small or emergency purchases. (3-15-02)
- 37. Request for Proposals.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals and is generally utilized in the acquisition of services or complex purchases. (3-15-02)
- 38. Request for Quotation.** The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase procedures. (3-15-02)
- 39. Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing activity acquire the stated requirements. (3-15-02)
- 40. Sealed.** Includes bids electronically sealed and submitted in accordance with requirements or standards set by the division and bids manually sealed and submitted. (3-15-02)
- 41. Sealed Procedure Limit.** That dollar amount, as established by these rules, above which the formal sealed bid procedure will be used. Said amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-15-02)
- 42. Services.** Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices. (3-15-02)
- 43. Small Purchase.** An acquisition that costs less than the sealed procedure limit. (3-15-02)
- 44. Solicitation.** Means an invitation to bid, a request for proposals or other document issued by the purchasing activity for the purpose of soliciting bids, proposals, or offers to perform a contract. (3-15-02)
- 45. Specifications.** The explicit requirements furnished with an invitation to bid, request for proposals or request for quotations upon which a purchase order or contract is to be based. Unless specifically provided in a solicitation, specifications do not include solicitation conditions or contractual terms including, without limitation, items such as vendor qualification requirements, bid closing times, delivery time or payment terms. (3-15-02)
- 46. State.** This means the state of Idaho including each agency unless the context implies other states of the United States. (3-15-02)
- 47. Supplies.** Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk. (3-15-02)
- 48. Telecommunications.** Means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-15-02)
- 49. Vendor.** A person or entity capable of supplying property to the state. (3-15-02)
- 50. Written.** When used in these rules, may include an electronic writing. (3-15-02)

# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.03 - PERSI CONTRIBUTION RULES

DOCKET NO. 59-0103-1402

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective October 21, 2014, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 eliminate contribution rate increases for employers and employees.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 76 through 79](#).

**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 negative fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, (208) 287-9271.

DATED this 1st Day of July, 2015.

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  
Tel: (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 June 17, 2015.

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 eliminate scheduled increase in contribution rates for employers and employees. Also, revises description of total rate in Rule 27.

**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(1), Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfoy, 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 June 24, 2015.

DATED this 27th Day of April, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0103-1402**

**026. PERSI EMPLOYER GENERAL MEMBER CONTRIBUTION RATE (RULE 26).**

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, shall be nine point seventy-seven percent (9.77%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point thirty-nine percent (10.39%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point thirty-two percent (11.32%) of payroll ~~through June 30, 2014. Beginning July 1, 2014, the rate shall be twelve point twenty-four percent (12.24%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirteen point sixty-five percent (13.65%) of payroll~~ until next determined by the Board.

Statutory Reference: Sections 59-1302(16), 59-1391, 59-1394, and 59-1397, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) ~~(4-4-13)~~ ( )

**027. FIREFIGHTER RETIREMENT FUND EMPLOYER RATE (RULE 27).**

The Firefighter Retirement Fund employer rate shall be: (10-1-94)

**01. Option I and II Firefighters.** For option I and II firefighters hired before October 1, 1980, as follows:

<b>Option I And II Firefighters</b>	
PERSI Employer Contribution Rate:	Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty-six percent (11.66%) of payroll <del>through June 30, 2014. Beginning July 1, 2014, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirteen point ninety-nine percent (13.99%) of payroll</del> until next determined by the Board.
Additional Employer Rate:	One percent (1.00%)
Social Security Rate:	Seven point sixty-five percent (7.65%)
Excess Merger Costs <u>Rate</u> :	Seventeen point twenty-four percent (17.24%) until next determined by the Board.
TOTAL Contribution <u>Rate</u> :	<del>Thirty six percent (36%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be thirty six point sixty-two percent (36.62%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be thirty seven point fifty five percent (37.55%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be thirty eight point forty seven percent (38.47%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirty nine point eighty eight percent (39.88%) of payroll until next determined by the Board.</del> <u>The total contribution rate is the sum of the PERSI employer contribution rate, the additional employer rate, the social security rate and the excess merger costs rate.</u>

(4-4-13)( )

**02. Class D Firefighters.** For class D firefighters (firefighters employed on or after October 1, 1980, by a city or fire district that employs paid firefighters who are participating in the Firefighters’ Retirement Fund), as follows:

<b>Class D Firefighters</b>	
PERSI Employer Contribution Rate:	Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty-six percent (11.66%) of payroll <del>through June 30, 2014. Beginning July 1, 2014, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirteen point ninety-nine percent (13.99%) of payroll</del> until next determined by the Board
Excess Merger Costs:	Seventeen point twenty-four percent (17.24%) until next determined by the Board.
TOTAL Contribution:	<del>Twenty seven point thirty five percent (27.35%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be twenty seven point ninety seven percent (27.97%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be twenty eight point nine percent (28.9%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be twenty nine point eighty two percent (29.82%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirty one point twenty three percent (31.23%) of payroll until next determined by the Board.</del> <u>The total contribution rate is the sum of the PERSI employer contribution rate and the excess merger costs rate.</u>

Statutory References: Sections 59-1302(16), 59-1391, 59-1394, 59-1397, 72-1403, and 72-1434, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) ~~(4-4-13)~~( )

**03. Class E Members.** For class E members (general members who meet the definition of paid firefighter under Section 59-1391(f), Idaho Code, but are not firefighters as defined in Section 59-1302(16), Idaho Code) the employer general member contribution rate as provided in Rule 26, plus the excess merger costs specified in Subsection 027.01. (3-20-04)

**028. PERSI EMPLOYER CLASS II CONTRIBUTION RATE (RULE 28).**

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, for an employee classified as a police officer member excluding those listed in Rule 29 of this chapter when applicable, and firefighters excluding those listed in Rule 27 of this chapter, shall be ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty-six percent (11.66%) of payroll ~~through June 30, 2014. Beginning July 1, 2014, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirteen point ninety-nine percent (13.99%) of payroll~~ until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) ~~(4-4-13)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PERSI EMPLOYEE GENERAL MEMBER CONTRIBUTION RATE (RULE 100).**

The PERSI employee contribution rate as provided in Section 59-1333, Idaho Code, for all members not classified as police members or firefighters, shall be five point eighty-six percent (5.86%) of salary through June 30, 2004. Beginning July 1, 2004, the rate shall be six point twenty-three percent (6.23%) of salary through June 30, 2013. Beginning July 1, 2013, the rate shall be six point seventy-nine percent (6.79%) of salary ~~through June 30, 2014. Beginning July 1, 2014, the rate shall be seven point thirty-four percent (7.34%) of salary through June 30, 2015. Beginning July 1, 2015, the rate shall be eight point nineteen percent (8.19%) of salary~~ until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) ~~(4-4-13)~~( )

**101. PERSI EMPLOYEE CLASS II CONTRIBUTION RATE (RULE 101).**

The employee contribution rate as provided in Section 59-1334, Idaho Code, for an employee classified as a police officer member is seven point twenty-one percent (7.21%) of salary through June 30, 2004. Beginning July 1, 2004, the rate shall be seven point sixty-five percent (7.65%) of salary through June 30, 2013. Beginning July 1, 2013, the rate shall be eight point thirty-two percent (8.32%) of salary ~~through June 30, 2014. Beginning July 1, 2014, the rate shall be eight point ninety-nine percent (8.99%) of salary through June 30, 2015. Beginning July 1, 2015, the rate shall be ten percent (10%) of salary~~ until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) ~~(4-4-13)~~( )



# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.03 - PERSI CONTRIBUTION RULES

DOCKET NO. 59-0103-1403

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective October 21, 2014, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 reduce the excess merger cost portion of the firefighter retirement fund employer rate.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 80 through 82](#).

**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 negative fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, (208) 287-9271.

DATED this 1st Day of July, 2015.

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  
Tel: (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 June 17, 2015.

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 reduce the excess merger cost portion of the firefighter retirement fund employer rate. Also, revises description of total rate in Rule 27.

**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(1), Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

**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: NA

**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 June 24, 2015.

DATED this 27th Day of April, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0103-1403**

**027. FIREFIGHTER RETIREMENT FUND EMPLOYER RATE (RULE 27).**

The Firefighter Retirement Fund employer rate shall be: (10-1-94)

**01. Option I and II Firefighters.** For option I and II firefighters hired before October 1, 1980, as follows:

<b>Option I And II Firefighters</b>	
PERSI Employer Contribution Rate:	Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty-six percent (11.66%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirteen point ninety-nine percent (13.99%) of payroll until next determined by the Board.
Additional Employer Rate:	One percent (1.00%)

Social Security Rate:	Seven point sixty-five percent (7.65%)
Excess Merger Costs <u>Rate</u> :	Seventeen point twenty-four percent (17.24%) <u>through December 31, 2014.</u> <u>Beginning January 1, 2015, five percent (5%)</u> until next determined by the Board.
TOTAL Contribution <u>Rate</u> :	<del>Thirty-six percent (36%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be thirty-six point six two percent (36.62%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be thirty-seven point fifty five percent (37.55%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be thirty-eight point forty seven percent (38.47%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirty-nine point eighty eight percent (39.88%) of payroll until next determined by the Board.</del> <u>The total contribution rate is the sum of the PERSI employer contribution rate, the additional employer rate, the social security rate and the excess merger costs rate.</u>

(4-4-13)( )

**02. Class D Firefighters.** For class D firefighters (firefighters employed on or after October 1, 1980, by a city or fire district that employs paid firefighters who are participating in the Firefighters’ Retirement Fund), as follows:

<b>Class D Firefighters</b>	
PERSI Employer Contribution Rate:	Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty-six percent (11.66%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirteen point ninety-nine percent (13.99%) of payroll until next determined by the Board.
Excess Merger Costs <u>Rate</u> :	Seventeen point twenty-four percent (17.24%) <u>through December 31, 2014.</u> <u>Beginning January 1, 2015, five percent (5%)</u> until next determined by the Board.
TOTAL Contribution <u>Rate</u> :	<del>Twenty-seven point thirty-five percent (27.35%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be twenty-seven point ninety seven percent (27.97%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be twenty-eight point nine percent (28.9%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be twenty-nine point eighty two percent (29.82%) of payroll through June 30, 2015. Beginning July 1, 2015, the rate shall be thirty one point twenty three percent (31.23%) of payroll until next determined by the Board.</del> <u>The total contribution rate is the sum of the PERSI employer contribution rate and the excess merger costs rate.</u>

Statutory References: Sections 59-1302(16), 59-1391, 59-1394, 59-1397, 72-1403, and 72-1434, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) (4-4-13)( )

**03. Class E Members.** For class E members (general members who meet the definition of paid firefighter under Section 59-1391(f), Idaho Code, but are not firefighters as defined in Section 59-1302(16), Idaho Code) the employer general member contribution rate as provided in Rule 26, plus the excess merger costs specified in Subsection 027.01. (3-20-04)

# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.02.01 - RULES FOR THE JUDGES' RETIREMENT FUND

DOCKET NO. 59-0201-1501

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. The pending rule becomes final and effective July 21, 2015, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 1-2012, Idaho Code.

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

These rules apply to the Judges' Retirement Fund (JRF). The changes are proposed in anticipation of seeking for the JRF a determination letter of qualified status from the IRS. They are also designed to amend the rules in certain areas so that the language tracks the language in the rules for the PERSI Base Plan. That tracking will make for easier and consistent administration and may also lessen the need for future revisions.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9, pages 427 - 435](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, 208-287-9271.

DATED this 28th Day of September, 2015.

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 TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 21, 2015.

**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 1-2012, 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 16, 2015.

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:

These rules apply to the Judges' Retirement Fund (JRF). The changes are proposed in anticipation of seeking for the JRF a determination letter of qualified status from the IRS. They are also designed to amend the rules in certain areas so that the language tracks the language in the rules for the PERSI Base Plan. That tracking will make for easier and consistent administration and may also lessen the need for future revisions.

**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:

To ensure the rules meet federal requirements, thereby lessening risk to qualified status (which benefits all members and beneficiaries and employers).

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiated rulemaking is not feasible because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations and because several of the changes are required by federal law for qualified plan status.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Joanna L. Guilfooy, (208) 287-9271.

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 23, 2015.

DATED this 21st Day of July, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0201-1501**

**010. DEFINITIONS (RULE 10).**

The following definitions shall apply to this chapter: (7-1-14)

**01. Accrued Benefit.** The actuarial value of the retirement benefit to which the Member is entitled under the Judges' Retirement Fund upon attainment of Normal Retirement Age. (7-1-14)

**02. Active Member.** Each justice or judge who participates in the Judges' Retirement Fund as provided by Idaho Code. (7-1-14)

**03. Administrator.** The Board. (7-1-14)

**04. Annual Additions.** Annual additions are the total of all after-tax Member contributions in a year (not including rollovers) and forfeitures allocated to a Member's account under the Judges' Retirement Fund and all other qualified plans to which contributions are made based on the Member's service with the Employer. (7-1-14)

**05. Beneficiary.** The designated person (or, if none, the Member's estate) who is entitled to receive benefits under the Plan after the death of a Member. (7-1-14)

**06. Board.** The retirement board established in Section 59-1304, Idaho Code. (7-1-14)

**07. Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered. (7-1-14)

**08. Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Member's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Member's gross income for the calendar year but for a compensation reduction election under sections 125, 132(f), 401(k), 403(b), or 457(b) of the Code. (7-1-14)

**09. Contingent Annuitant.** The person designated by a Member under certain retirement options to receive payments upon the death of the Member. The person so designated must be born and living on the effective date of retirement. (7-1-14)

**10. Designated Beneficiary.** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. (7-1-14)

**11. ~~Distribution Calendar Year.~~** ~~A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Rule 100 of these rules.~~ **Differential Wage Payments.** Differential Wage Payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer. (7-1-14)(\_\_\_\_)

**12. Employer.** The common law employer of a Member. (7-1-14)

**13. ~~Includible Compensation.~~** ~~A Member's actual wages in box one (1) of Form W-2 for a year for services to the Employer, but subject to a maximum of two hundred thousand dollars (\$200,000) (or the maximum as~~

~~may apply under section 401(a)(17) of the Code, if different) and increased (up to the dollar maximum) by any compensation reduction election under sections 125, 132(i), 401(k), 403(b), or 457(b) of the Code. (7-1-14)~~

**143. Judges' Retirement Fund.** The Judges' Retirement Fund established under Title 1, Chapter 20, Idaho Code, and rules applicable to the Judges' Retirement Fund. The Judges' Retirement Fund is intended to satisfy Code section 401(a) as applicable to governmental plans described in Code section 414(d). It is maintained for the exclusive benefit of Members and their beneficiaries. (7-1-14)

~~**15. Life Expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations. (7-1-14)~~

**164. Member.** An individual who is currently accruing benefits or who has previously accrued benefits under the Plan and who has not received a distribution of his entire benefit under the Plan. (7-1-14)

**175. Normal Retirement Age.** The age (or combination of age and years of service) at which a Member is entitled to an actuarially unreduced retirement benefit under the Plan. A Member will be fully vested upon attainment of Normal Retirement Age. (7-1-14)

**186. Plan.** The plan of benefits under the Judges' Retirement Fund. (7-1-14)

**197. Required Beginning Date.** The date specified in Rule 100 of these rules. (7-1-14)

**2018. Severance from Employment.** The date that the Member dies, retires, or otherwise has a separation from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). (7-1-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. ~~TIME AND MANNER OF~~ REQUIRED MINIMUM DISTRIBUTIONS (RULE 100).**

~~**01. Required Beginning Date.** The Member's entire interest will be distributed, or begin to be distributed to the Member no later than the Member's Required Beginning Date. (7-1-14)~~

~~**02. Death of Member Before Distributions Begin.** If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows: (7-1-14)~~

~~**a. Surviving Spouse is Sole Designated Beneficiary.** If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age seventy and one-half (70½), if later. (7-1-14)~~

~~**b. Surviving Spouse is Not Sole Designated Beneficiary.** If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died. (7-1-14)~~

~~**c. No Designated Beneficiary.** If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death. (7-1-14)~~

~~**d. Surviving Spouse Dies Before Distribution.** If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Rule 100, other than Rule 100.02.a., will apply as if the surviving spouse were the Member. For purposes of this Subsection 100.02, distributions are considered to begin on the Member's Required Beginning Date (or, if the preceding sentence applies, the date distributions are required to begin to the surviving spouse under this section). If annuity payments irrevocably commence to the Member before the Member's Required Beginning Date~~



*(or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under this section), the date distributions are considered to begin is the date distributions actually commence. (7-1-14)*

~~*e. Form of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with this Rule 100. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations. Any part of the Member's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts. (7-1-14)*~~

~~**03. Determination of Amount to be Distributed Each Year. (7-1-14)**~~

~~*a. General Annuity Requirements. If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements: (7-1-14)*~~

~~*i. The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year; (7-1-14)*~~

~~*ii. The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Rule 101 or Rule 103 of these rules; (7-1-14)*~~

~~*iii. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; (7-1-14)*~~

~~*iv. Payments will either be nonincreasing or increase only as follows: (7-1-14)*~~

~~*(1) By an annual percentage increase that does not exceed the annual percentage increase in a cost of living index that is based on prices of all items and issued by the Bureau of Labor Statistics; (7-1-14)*~~

~~*(2) To the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the Member's beneficiary pursuant to an approved domestic relations order within the meaning of section 414(p) of the Code; (7-1-14)*~~

~~*(3) To provide cash refunds of employee contributions upon the Member's death; or (7-1-14)*~~

~~*(4) To pay increased benefits that result from a Plan amendment. (7-1-14)*~~

~~*b. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under Rule 100.02 of these rules) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date. (7-1-14)*~~

~~*e. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues. (7-1-14)*~~

~~**04. Requirements for Annuity Distributions that Commence During Member's Lifetime. (7-1-14)**~~

~~*a. Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse. If the Member's interest is*~~

~~being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary; annuity payments to be made on or after the Member's Required Beginning Date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A 2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.~~ (7-1-14)

~~**b.** *Period Certain Annuities.* Unless the Member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Member reaches age seventy (70), the applicable distribution period for the Member is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy (70) over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's spouse is the Member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this section, or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint And Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the annuity starting date.~~ (7-1-14)

~~**05. Requirements for Minimum Distributions Where Member Dies Before Date Distributions Begin.**~~ (7-1-14)

~~**a.** *Member Survived by Designated Beneficiary.* If the Member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in this section, over the life of the designated beneficiary or over a period certain not exceeding-~~ (7-1-14)

~~**i.** *Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or*~~ (7-1-14)

~~**ii.** *If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.*~~ (7-1-14)

~~**b.** *No Designated Beneficiary.* If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest (to the estate of the Member in accordance with the applicable laws of distribution and descent) will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.~~ (7-1-14)

~~**c.** *Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.* If the Member dies before the date distribution of his interest begins, the Member's surviving spouse is the Member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section will apply as if the surviving spouse were the Member, except that the time by which distributions must begin will be determined without regard to this section.~~ (7-1-14)

~~**d.** *Incidental Death Benefit.* The foregoing limitations are designed to assure that any death benefits are paid in a form that complies with the incidental death benefit requirements of section 401(a)(9)(G) of the Code.~~ (7-1-14)

**01. Default Application of Federal Requirements.** With respect to distributions under the Judges'

Retirement Fund, and except as provided in Subsection 100.06, the Judges' Retirement Fund will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (Code) in accordance with a good faith interpretation of section 401(a)(9), notwithstanding any provision of the Judges' Retirement Fund to the contrary. ( )

**02. Required Beginning Date.** Except as otherwise provided in Subsections 100.03 through 100.06, distributions under the Judges' Retirement Fund shall begin not later than April 1 following the later of: ( )

**a.** The calendar year (hereinafter referred to as the "Commencement Year") in which the member reaches age seventy and one half (70 ½); and ( )

**b.** The year in which he retires. ( )

**03. Lifetime Distributions.** Distribution shall be made over the life of the Member or the lives of the Member and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary. ( )

**04. Timing of Required Distributions.** A required distribution shall be deemed to have been made during the Commencement Year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the Commencement Year. ( )

**05. Adjustment of Required Distributions.** Benefits paid prior to the Commencement Year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. ( )

**06. Annuity Benefits Payable on Death of a Member.** All death benefits payable in the form of an annuity will begin to be paid as soon as administratively practicable after the member's death, but must in any event begin to be paid before the end of the calendar year following the calendar year in which the member died. ( )

**07. Death Benefits.** All death benefits payable in a lump sum will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. ( )

**101. MAXIMUM LIMITATIONS ON BENEFITS (RULE 101).**

~~**01. Maximum Employer Derived Annual Retirement.** *Effective January 1, 2002, the employer-derived annual retirement pension payable under the Judges' Retirement Fund shall not exceed one hundred sixty thousand dollars (\$160,000). However, if the Member has not completed ten (10) years of participation, such maximum amount shall be reduced to an amount equal to such maximum amount multiplied by the ratio which the number of years of his participation bears to ten (10). In no event shall the preceding sentence reduce the limitation set forth in the first sentence of this Subsection 101.01 to an amount less than one tenth (1/10) of such limitation (determined without regard to the preceding sentence). If the pension begins before the Member's sixty-second birthday, the maximum amount shall be the actuarial equivalent of one hundred sixty thousand dollars (\$160,000) beginning at age sixty-two (62). For purposes of the preceding sentence, the actuarial equivalent value shall be based on an interest rate equal to the greater of five percent (5%) per year or the interest rate otherwise used under the Plan in the determination of actuarial equivalent value. If the pension begins after the Member's sixty-fifth birthday, the maximum amount shall be the actuarial equivalent value based on an interest rate equal to the lesser of five percent (5%) per year or the interest rate otherwise used under the Plan in the determination of actuarial equivalent value, to that maximum benefit payable at age sixty-five (65).* (7-1-14)~~

~~**a.** *The preceding paragraph shall not apply to benefits payable as the result of the recipient becoming disabled by reason of personal injuries or sickness, or benefits payable to a beneficiary, survivors, or the estate of a Member as the result of the death of the Member. This section and Rule 102 of these rules are intended to reflect the limitations of Internal Revenue Code section 415, to the extent applicable to governmental plans.* (7-1-14)~~

~~**b.** *As of January 1 of each calendar year on and after January 1, 2002, the dollar limitation in*~~

~~Subsection 101.01 above, with respect to both active and retired Members, shall be adjusted for increases in the cost of living, taking into consideration applicable guidelines. (7-1-14)~~

~~e. For limitation years beginning on or after July 1, 2007, the Plan will make any required adjustments to the dollar limitation in accordance with the final 415 regulations published on April 5, 2007. (7-1-14)~~

~~**02. Employer-Derived Annual Retirement Defined.** The employer-derived annual retirement pension is the excess, if any, of the total annual retirement pension over the Member derived annual retirement pension. (7-1-14)~~

~~**03. Member-Derived Annual Retirement.** The Member derived annual retirement pension shall be the actuarial equivalent of the Member's contribution under Appendix A. The rate of interest to be used in calculating actuarial equivalence for Plan Years beginning on or before December 31, 2007 shall be Thirty (30) Year Treasury Securities Rate for the month before the date of distribution. For plan years beginning on or after January 1, 2008, the rate of interest to be used in calculating actuarial equivalence shall be the adjusted first, second, and third segment rates applied under rules similar to the rules of Code section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe (the "post PPA '06 applicable interest rate"). For this purpose, the adjusted first, second, and third segment rates are determined without regard to the twenty-four (24) month averaging provided under Code section 430(h)(2)(D)(i), and Code section 417(e)(3)(D)(ii) provides a transition rule that phases in the use of the segment rates over five (5) years. The mortality rate to be used for plan years beginning on or before December 31, 2007 shall be based on the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on the date as of which present value is being determined. For plan years beginning on or after January 1, 2008, the mortality rate shall be based on a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of Code section 430(h)(3) (without regard to subparagraph (C) or (D) of such section) (the "post PPA '06 applicable mortality table"). (7-1-14)~~

~~**04. Benefits Accrued as of December 31, 1982.** Notwithstanding the preceding paragraph of this Section 101, in no event shall a Member's annual pension payable under the Plan be less than the benefit which the Member had accrued under the Plan as of December 31, 1982; provided, however, that in determining such benefit no changes in the Plan on or after July 1, 1982 shall be taken into account. (7-1-14)~~

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 101.01 and, if applicable, in Subsections 101.02 through 101.04). ( )

**01. Less Than Ten Years of Service.** If the Member has fewer than ten (10) years of participation in the Judges' Retirement Fund, the defined benefit dollar limitation shall be multiplied by a fraction: ( )

**a.** The numerator of which is the number of years (or part thereof) of participation in the Judges' Retirement Fund; and ( )

**b.** The denominator of which is ten (10). ( )

**02. Benefit Begins Prior to Age Sixty-Two.** If the benefit of a Member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-two (62) (adjusted under Rule 101.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. ( )

**03. Benefit Begins at Age Sixty-Five.** If the benefit of a Member begins after the Member attains age sixty-five (65), the defined benefit dollar limitation applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined

benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted under Rule 101.01, if required.) The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. ( )

**04. Transition.** Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former Members (with benefits limited by section 415(b)) who have an accrued benefit under the Judges' Retirement Fund immediately prior to the effective date of this Rule (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b).) ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. ROLLOVER DISTRIBUTIONS (RULE 103).**

**01. Direct Rollovers.** A Member of the Judges' Retirement Fund or a beneficiary of a Member (including a Member's former spouse who is the alternate payee under an approved domestic relations order) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover. Effective January 1, 2006, in the event of a mandatory distribution greater than one thousand dollars (\$1,000), if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. (7-1-14)

**02. Eligible Rollover Distribution Defined.** For purposes of this Rule, an eligible rollover distribution means any distribution of all or any portion of a Member's account balance, except that an eligible rollover distribution does not include (a) any installment payment for a period of ten (10) years or more, (b) any distribution made as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in section 408A of the Code. (7-1-14)

**03. After-Tax Contributions.** For purposes of the direct rollover provisions in Rule 103.01, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. ( )

**04. Alternate Payees.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Rule 402 are distributees with regard to the interest of the spouse or former spouse. ( )

**05. Transfers to Non-Spouse Beneficiaries.** This Rule 103.05 applies to distributions made on or after July 1, 2008. Notwithstanding any provision of the Judges' Retirement Fund to the contrary that would otherwise limit the options of the Beneficiary of a deceased Member who is not the Member's spouse, the administrator shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement account established under Section 408 of the Code in accordance with the provisions of Code section 402(e)(11). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**406. EXCLUSIVE PURPOSE (RULE 406).**

The Board shall hold the assets of the Judges' Retirement Fund in trust for the exclusive purpose of providing benefits to Members and Beneficiaries and paying reasonable expenses of administration. It shall be impossible by operation of the Judges' Retirement Fund, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Judges' Retirement Fund, or any funds contributed thereto, to inure to the benefit of any Employer or otherwise be used for or diverted to purposes other than providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Judges' Retirement Fund. ( )

**407. BENEFITS DURING MILITARY SERVICES (RULE 407).**

**01. Death Benefits.** ( )

a. This subsection 407.01 applies to a member of the Judges' Retirement Fund who dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

b. The period of military service that results in the member's death will be counted in the determination of whether the member qualifies for the death benefit described in section 2009-1(b) to the extent required by Code Section 401(a)(37). ( )

**02. Determination of Return to Employment for Benefit Accrual Purposes.** ( )

a. This subsection 407.02 applies to a member of the Judges' Retirement Fund who becomes disabled or dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

b. For benefit accrual purposes, a member of the Judges' Retirement Fund shall be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability to the extent permitted by Code Section 414(u)(8). ( )

**03. Differential Wage Payments.** ( )

a. This subsection 407.02 applies to a member of the Judges' Retirement Fund who, on or after January 1, 2009, receives differential wage payments from his or her Employer while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

b. A member of the Judges' Retirement Fund shall be treated as employed by the Employer while performing qualified military service to the extent required by Code Section 3401(h). ( )

**4068. -- 999. (RESERVED)**