

COMMERCE & HUMAN RESOURCES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2011 Legislative Session

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IDAPA 09 - DEPARTMENT OF LABOR

09.01.04 - UNEMPLOYMENT INSURANCE BENEFIT FRAUD AND OVERPAYMENT RULES

DOCKET NO. 09-0104-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2010, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

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

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010 Idaho Administrative Bulletin, Vol. 10-8, pages 34 through 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 impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael Johnson, Bureau Chief, 334-3570 ext. 3082.

DATED this 28th day of October, 2010.

Michael Johnson
Bureau Chief
Department of Labor
317 W. Main St.
Boise, ID 83735
Phone 332-3570 ex. 3082
Fax 334-6125

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2010**.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

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

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

This rulemaking allows a waiver of repayment request to be made within fourteen days of the electronic transmission date of a Determination of Overpayment and allows a Determination of Overpayment to become final fourteen days after its electronic transmission; provides recourse for errors in electronic transmissions; adds required subsections for incorporation by reference, office hours, and public records act compliance; and makes technical corrections.

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

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

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

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

There will be no fiscal impact to the General Fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to 72-1368(5), Idaho Code, that were passed during 2010 Legislative Session.

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

There are no documents 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 Michael Johnson 332-3570 ext. 3082.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0104-1001

004. INCORPORATED BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. ()

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

The principle place of business of the Department of Labor is in Boise, Idaho. ()

01. Street Address and Hours. The office is located at 317 W. Main St., Boise, Idaho 83735 and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho 83735. ()

03. Telephone. The telephone number of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ()

007. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

011. (RESERVED).

012. MATERIALITY, FRAUD DETERMINATIONS.

For purposes of Idaho Code Section 72-1366(12), a fact is material if it is relevant to a determination of a claimant's right to benefits. To be considered material, the fact need not actually affect the outcome of an eligibility determination. Ref. Section 72-1366, Idaho Code.

(3-19-99)

0123. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

050. WAIVER OF REPAYMENT.

A Determination of Waiver will be made upon the written request of any interested party; except that an appeals examiner or the Industrial Commission may consider the issue of waiver of repayment on their own motion. A request for a Determination of Waiver must be made within fourteen (14) days of the date of mailing of the Determination of Overpayment or Revised Determination of Overpayment, or within fourteen (14) days of the date of electronic transmission to an electronic-mail address approved by the Department of the Determination of Overpayment or Revised Determination of Overpayment. If a party establishes by a preponderance of the evidence that notice of a Determination of Overpayment or Revised Determination of Overpayment was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, or that notice of a Determination of Overpayment or Revised Determination of Overpayment was not transmitted to an electronic-mail address approved by the Department within fourteen (14) days of the date of transmission because of error on the part of the Department, the period for filing a timely request for Determination of Waiver shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Section 72-1369, Idaho Code. (3-19-99)()

01. Waiver Determination. A Determination of Waiver shall become final unless, within fourteen (14) days after the date of mailing or of electronic transmission to an electronic-mail address approved by the Department, an appeal is filed with the Department of Labor. If a party establishes by a preponderance of the evidence that notice of a Determination of Waiver was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, or that notice of a Determination of Waiver was not transmitted to an electronic-mail address approved by the Department within fourteen (14) days of the date of transmission because of error on the part of the Department, the period for filing a timely request for an appeal shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Section 72-1369, Idaho Code. (3-19-99)()

IDAPA 09 - DEPARTMENT OF LABOR

09.01.06 - RULES OF THE APPEALS BUREAU

DOCKET NO. 09-0106-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2010, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

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

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010 Idaho Administrative Bulletin, Vol. 10-8, pages 37 through 40.](#)

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Josh McKenna, Benefits Bureau Chief, 334-3570 ext. 3919.

DATED this 28th day of October, 2010.

Josh McKenna
Benefits Bureau Chief
Department of Labor
317 W. Main St.
Boise, ID 83735
Phone 332-3570 ex. 3919
Fax 334-6125

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2010**.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

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

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

This rulemaking provides recourse for errors in the electronic transmission of determinations or decisions; adds that notice of decisions may be served on interested parties by electronic transmission as allowed by Section 72-1368(5), Idaho Code; adds required subsections for incorporation by reference, office hours and public records act compliance; and to make technical corrections.

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

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

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

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

There will be no fiscal impact to the General Fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to 72-1368(5), Idaho Code, that were passed during 2010 Legislative Session.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Josh McKenna at 334-3570 ext. 3919.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0106-1001

~~004. -- 005. (RESERVED).~~

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. ()

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

The principle place of business of the Department of Labor is in Boise, Idaho. ()

01. Street Address and Hours. The office is located at 317 W. Main St., Boise, Idaho 83735 and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. ()

02. Mailing Address. The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho 83735. ()

03. Telephone. The telephone number of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. ()

007. GENERAL PROVISIONS.

Department hearing officers shall be called appeals examiners. Ref. Section 72-1368(6) and Section 45-617(7), Idaho Code. (4-5-00)

0078. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

Pursuant to the provisions of Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, "Contested Cases," of the rules of administrative procedure promulgated by the Attorney General as IDAPA 04.11.01.100 through 799 do not apply to appeals within the Department. All appeals within the Department are governed solely by the provisions of the Employment Security Law, the Claims for Wages Act, these rules, and by the applicable federal law governing the Job Service Complaint System, the Job Training Partnership Act (JTPA) program, or other programs administered by the Department. (4-5-00)

0089. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

01. Proceedings to Determine the Rights to Unemployment Insurance Benefits and Tax Contribution. All proceedings to determine the rights to unemployment insurance benefits and tax contribution coverage are exempt from the contested case and judicial review provisions of the Idaho Administrative Procedure Act, pursuant Sections 72-1361 and 72-1368, Idaho Code. Appeals of complaint determinations and other decisions arising within the complaint system or other programs administered by the Department must be determined by the requirements of applicable federal law. The Department has promulgated its own rules of procedure for its appeals proceedings contained in IDAPA 09.01.06.001 et seq. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of Employment Security Law. Such proceedings must be speedy and simple as required by the Federal Unemployment Tax Act and the Social Security Act. The Department determines that it can more adequately meet these requirements through promulgating its own rules rather than relying upon the rules applicable to other state agencies. (4-5-00)

02. Claims for Wages Are Exempt. All proceedings to determine claims for wages are exempt from the contested case provisions of the Idaho Administrative Procedure Act pursuant to Section 45-617(2), Idaho Code. (4-5-00)

~~009~~10. -- 011. (RESERVED).

012. FILING OF AN APPEAL.

01. Filing of an Appeal Pursuant to the Employment Security Law. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination, redetermination or decision of the Department. The appeal may be filed by delivering it, or faxing it, to any Job Service office or to the Appeals Bureau of the Department, 317 W. Main Street, Boise, Idaho 83735-0720. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a Job Service office or the Appeals Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a Job Service office or the Appeals Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Job Service office or to the Appeals Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735-0720. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the envelope

containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal shall be deemed to be timely filed. Ref. Section 72-1368(6), Idaho Code. (5-3-03)

02. Filing of an Appeal Pursuant to the Claims for Wages Act. An appeal shall be in writing, signed by the appellant or the appellant's representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or revised determination of the Department. The appeal may be filed by personal delivery, by mail, or by fax to the Wage and Hour Section of the Department at the address indicated on the Wage Claim Determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed appeal that is received by the Wage and Hour Section by 5 p.m. on a business day shall be deemed filed on that date. A faxed appeal that is received by the Wage and Hour Section on a weekend, holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. Ref. Section 45-617(6), Idaho Code. (4-5-00)

03. Date of Mailing. *The "Date of Mailing" or "Date Mailed."* The date indicated on Department determinations, revised determinations, redeterminations and decisions **as the "Date of Mailing" or "Date Mailed"** shall be presumed to be the date the document was deposited in the United States mail, **or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code,** unless shown otherwise by a preponderance of competent evidence. (4-5-00)()

013. -- 016. (RESERVED).

017. EFFECT OF POSTAL SERVICE DELAY OR ERROR.

01. Department Determinations. ()

a. If a party establishes by a preponderance of the evidence that notice of a Department determination was not delivered to the party's last known address within fourteen (14) days of mailing, as provided by the Employment Security Law in Sections 72-1368(3) and (5), Idaho Code, and by the Claims for Wages Act in Sections 45-617(4) and (5), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely appeal shall be deemed to have been fourteen (14) days from the date of actual notice. (4-5-00)

b. If a party establishes by a preponderance of the evidence that notice of a Department determination was not transmitted electronically to an electronic-mail address approved by the Department as provided by the Employment Security Law in Sections 72-1368(3) and (5), Idaho Code, because of error on the part of the Department, the period for filing a timely appeal shall be deemed to have been fourteen (14) days from the date of actual notice. ()

02. Decisions of the Appeals Examiner. ()

a. If a party establishes by a preponderance of the evidence that notice of a decision by an appeals examiner was not delivered to the party's last known address within ten (10) days of

mailing, as provided by the Employment Security Law in Sections 72-1368(5) and (6), Idaho Code, and by the Claims for Wages Act in Sections 45-617(5) and (7), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely application for rehearing shall be deemed to have been ten (10) days from the date of actual notice. If it is established by a preponderance of the evidence that notice of a decision was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, the period for filing a timely claim for review with the Industrial Commission under the Employment Security Law shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. (4-5-00)

b. If a party establishes by a preponderance of the evidence that notice of a decision by an appeals examiner was not transmitted electronically to an electronic-mail address approved by the Department as provided by the Employment Security Law in Sections 72-1368(5) and (6), Idaho Code, because of error on the part of the Department, the period for filing a timely application for rehearing shall be deemed to have been ten (10) days from the date of actual notice. If it is established by a preponderance of the evidence that notice of a decision by an appeals examiner was not transmitted electronically to an electronic-mail address approved by the Department because of error on the part of the Department, the period for filing a timely claim for review with the Industrial Commission under the Employment Security Law shall be deemed to have been fourteen (14) days from the date of actual notice. ()

(BREAK IN CONTINUITY OF SECTIONS)

090. DISMISSAL IF FILING IS LATE.

Where it appears that any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, may not have been filed within the period of time prescribed for filing, the appellant, claimant, petitioner, or applicant (as the case may be) shall be notified and be given an opportunity to show that such appeal, claim for review, petition, or other request was timely. In computing any period of time prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays shall be counted during the period unless the last day of the period is a Saturday, Sunday, or legal holiday in which event the period shall not expire until the next business day following the Saturday, Sunday, or legal holiday. If it is found that such appeal, claim for review, petition or other request or application was not filed within the applicable time limit, it shall be dismissed on such grounds. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter shall be decided on the merits. Copies of a decision under this section shall either be given, ~~or~~ mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code. (4-5-00)()

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2010, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

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

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010 Idaho Administrative Bulletin, Vol. 10-8, pages 41 through 43.](#)

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Josh McKenna, Benefits Bureau Chief, 334-3570 ext. 3919.

DATED this 28th day of October, 2010.

Josh McKenna
Benefits Bureau Chief
Department of Labor
317 W. Main St
Boise, ID 83735
Phone 332-3570 ex. 3919
Fax 334-6125

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2010**.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

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

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

This rulemaking provides for the reissuing of benefit payment checks that are lost, stolen, destroyed, or forged by means other than paper checks; and reduces the amount of unemployment insurance benefits paid in a compensable week by an amount equal to the temporary disability benefits a claimant received under any worker's compensation law.

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

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to 72-1312(4)(b) and 72-1346(3), Idaho Code, that were passed during 2010 Legislative Session.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Josh McKenna 334-3570 ext. 3919.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-1001

500. REISSUING CHECKS BENEFIT PAYMENTS.

Whenever a benefit check payment is lost, stolen, destroyed, or forged, the claimant shall be issued a new check benefit payment upon his proper presentation of the facts and submission of an affidavit, in a form prescribed by the Department, for the issuance of a new check benefit payment. Ref. Section 72-1368(1), Idaho Code. (3-19-99)()

01. Affidavit for Issuance of New Check Benefit Payment. A claimant's affidavit filed for the issuance of a new check benefit payment must be signed before a notary public or an authorized representative of the Department. ~~If a claimant completes an affidavit and submits the remaining portions of a partially destroyed or mutilated check, the Department will waive any waiting period for reissuance of the check.~~ (3-19-99)()

02. Reissuance of Stolen Checks Benefit Payments. If a claimant knows who took a check benefit payment, he must provide evidence that he has taken all reasonably available legal steps and been unsuccessful in recovering the check benefit payment before the Department will consider reissuing the check benefit payment. (3-19-99)()

501. -- 524. (RESERVED).

525. REPORTABLE INCOME.

Ref. Sections 72-1312, 72-1328, Idaho Code.

(3-19-99)

01. Back Pay or Disputed Wages. Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages for the weeks in which the claimant would have earned them, or are assignable to the weeks stipulated in the award or judgment. If the claimant received waiting week credit for a week in which the award or judgment is reported or assigned, the waiting week will be denied if the amount of the award or judgment for the week renders the claimant ineligible for such credit. If the claimant received benefits for the weeks in which the award or judgment is reported or assigned, such benefits are overpaid to the extent that the weekly amount of the award or judgment affects the claimant's eligibility.

(3-19-99)

02. Disability/Injury Compensation. Injury or disability compensation payments are not considered wages and are not reportable income for unemployment insurance purposes.

(3-19-99)

03. Disability Retirement Payments. Retirement payments as a result of disability shall be treated the same as other types of retirement payments. Ref. Section 72-1312(4), Idaho Code.

(3-19-99)

04. Gratuities or Tips. Gratuities or tips must be reported by a claimant for the week in which each gratuity or tip is earned.

(3-19-99)

05. Holiday Pay. Holiday pay must be reported as though earned in the week in which the holiday occurs.

(4-6-05)

06. Non-Periodic Remuneration. All non-periodic remuneration such as one-time severance pay, profit sharing, and bonus pay is reportable for the week in which paid.

(3-19-99)

07. Penalty or Damage Awards. Amounts awarded to a claimant as a penalty or damages against an employer, other than for lost wages, do not constitute wages.

(3-19-99)

08. Pension, Retirement, or Annuity Payments. The pension deduction provision of Section 72-1312(4), Idaho Code, only applies if the pension, retirement pay, annuity, or other similar periodic payment is made under a plan maintained or contributed to by a base period employer. The dollar amount of the weekly pension shall be deducted from the claimant's weekly benefit amount unless the claimant has made contributions toward the pension. If the claimant has made contributions toward the pension plan, the pension offset shall be reduced one hundred percent (100%), and no deduction for the pension shall be made from the claimant's weekly benefit amount. Ref. Section 72-1312(4), Idaho Code.

(3-19-99)

a. Pension Contributions. The burden shall be on the claimant to establish by substantial, competent evidence that he has made contributions toward the pension, retirement pay, annuity or other similar payment plan.

(3-19-99)

b. Pension Payment Changes. Any change in the amount of the pension, retirement, or annuity payments which affects the deduction from the claimant's weekly benefit amount shall be applied in the first full week after the effective date of the change.

(3-19-99)

09. Relief Work or Public Assistance. (3-19-99)

a. Remuneration received for relief work or public service work will be considered wages on the same basis as any other employment.

(3-19-99)

b. Eligibility When Public Assistance Received. A person receiving public assistance shall be eligible for benefits if no work is involved and the claimant is otherwise eligible.

(3-19-99)

10. Self-Employment Earnings. When reporting earnings, a claimant must report gross earnings from self-employment unless the claimant can prove that certain expenditures, which are not commonly associated with working for wages, were necessary in order to accomplish the work. Such expenditures may include, but are not limited to, buying products wholesale for resale and renting equipment to accomplish a task. Expenditures which are not deductible include, but are not limited to, transportation costs, uniforms, and depreciation of equipment. (3-19-99)

11. Severance Pay. An equal portion of a periodic severance payment must be reported in each week of the period covered by the payment. However, severance pay received in a lump sum payment at the time of severance of the employment relationship must be reported when paid. (3-19-99)

12. Vacation Pay. Vacation pay allocable to a certain period of time in accordance with an employment agreement must be reported in the week to which it is allocable. However, vacation pay received in a lump-sum payment at the time of severance of the employment relationship must be reported when paid. (3-19-99)

13. Verification of Earnings on Claim Reports. The Department may verify the earnings and/or reasons for separation reported by claimants on claim reports filed for benefit payments. Ref. Section 72-1368(1), Idaho Code. (3-19-99)

14. Wages for Contract Services. A person who is bound by a contract which does not prevent him from accepting other employment but who receives pay for a period of not working, is required to report the contract payments as earnings in equal portions in each week of the period covered by the contract. This rule does not apply to employees of educational institutions. (3-19-99)

15. Wages for Services Performed Prior to Separation. Wages for services performed prior to a claimant's separation are reportable for the week in which earned. (3-19-99)

16. Temporary Disability Benefits. For any week with respect to which a claimant is receiving or has received temporary disability benefits under a worker's compensation law of any state or under a similar law of the United States, such payments shall be reported in an amount attributable to such week. If a claimant receives an award of temporary disability benefits which is attributable to any week in which the claimant had already received unemployment insurance benefits, the unemployment insurance benefits are overpaid to the extent the weekly amount of temporary disability benefits affects the claimant's eligibility for unemployment benefits. ()

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2010, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

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

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010 Idaho Administrative Bulletin, Vol. 10-8, pages 44 through 48.](#)

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael Johnson, Bureau Chief, 334-3570 ext. 3082.

DATED this 28th day of October, 2010.

Michael Johnson, Bureau Chief
Department of Labor
317 W. Main St., Boise, ID 83735
Phone 332-3570 ex. 3082 / Fax 334-6125

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2010**.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

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

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

This rulemaking adds that notice of determinations may be served on interested parties by electronic transmission as allowed by Section 72-1368(5), Idaho Code; requires employers to maintain unemployment insurance tax records for five years allowing the Department to implement the new five (5) year enforcement limitation period of Section 72-1349(8), Idaho Code; provides a five-year statute of limitations for audits and inspections of employer records as required by Section 72-1349(8), Idaho Code; and makes technical corrections.

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

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to Sections 72-1349(8) and 72-1368(5), Idaho Code, that were passed during 2010 Legislative Session.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael Johnson 332-3570 ext. 3082. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0135-1001

011. GENERAL PROVISIONS.

The following Unemployment Insurance Tax Administration Rules are adopted pursuant to Section 67-4702, Idaho Code. (4-11-06)

01. Quarterly Reporting. Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code. (3-22-07)

02. Contribution Due Date. Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Section 72-1349, Idaho Code. (3-19-99)

03. Penalties and Interest on Bankruptcy. Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. (3-19-99)

04. Lien Interest. Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Section 72-1360, Idaho Code. (3-19-99)

05. Penalty and Interest During Controversy. Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sections 72-1354 and 72-1360, Idaho Code. (3-19-99)

06. Confidential Information. Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise

provided by law or these rules. Ref. Sections 9-340 and 72-1342, Idaho Code. (3-19-99)

07. Filing of an Employer Appeal. (3-30-01)

a. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any Idaho Labor local office or to the UI Compliance Bureau of the Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Idaho Department of Labor local office or to the UI Compliance Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Section 72-1361, Idaho Code. (3-22-07)

b. An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

c. In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if (i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

08. Determinations. Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, of the determination in accordance with Sections 72-1361 and -1368(5), Idaho Code. ~~(3-30-01)~~()

09. Determination of Payment Date. Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Section 72-1349, Idaho Code. (3-19-99)

10. Release of Lien upon Payment in Full. An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code.

(3-19-99)

11. Contribution Reports. Each contribution shall be accompanied by an employer's contribution report in a form or medium prescribed and furnished or approved for such purpose, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed or furnished by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code. (4-11-06)

a. Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sections 72-1325 and 72-1315, Idaho Code. (3-22-07)

(BREAK IN CONTINUITY OF SECTIONS)

081. EMPLOYER RECORDS.

Each person hiring one (1) or more individuals, whether or not such employment is sufficient to create the status of a covered employer, shall establish and maintain records to show the information hereinafter indicated. Such records shall be kept for a period of ~~three~~ **five (35)** years after the calendar year in which the remuneration was due. Ref. Section 72- 1337, Idaho Code. ~~(3-19-99)~~()

01. Required Information. Such records shall show with respect to each employee unless the Department has ruled that the services do not constitute covered employment: (4-11-06)

- a.** Full name and home address of worker; (3-19-99)
- b.** Social Security account number; (3-19-99)
- c.** The place of work within this State; (4-11-06)
- d.** Date on which employee was hired, rehired, or returned to work after temporary or partial layoff; (3-19-99)
- e.** Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for discharge; (3-19-99)
- f.** Wages paid for employment in each pay period and total wages for all pay periods

ending in each quarter of the year, showing separately: (3-19-99)

- i. Money wages; (3-19-99)
- ii. The cash value of other remuneration; and (3-19-99)
- iii. The amount of all bonuses or special commissions. (3-19-99)

02. Special Remuneration. Any special remuneration paid for services performed in more than one-quarter (1/4) of the year, such as annual commissions or bonuses, gifts and prizes, showing separately: (3-19-99)

- a. Money payments; and (3-19-99)
- b. The cash value of other remuneration and the nature thereof. (3-19-99)

03. Travel or Employee Business Expenses. Amounts paid to employees as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them. (3-19-99)

04. Records to Be Made Available. The records to be made available to the director or his authorized representative, in accordance with the provisions of Section 72-1337, Idaho Code, shall include all of the business records, such as journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of and/or amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the department. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

166. FIELD OPERATIONS CONTROL.

When circumstances dictate, and as a result of nonpayment of liabilities, the employer shall be notified by mail to the last known address of lien proceedings against the employer's interests, with an explanation of the amounts due, and the accrual of interest at the proper rate until the lien is satisfied. Ref. Section 72-1360, Idaho Code. (4-11-06)

01. Statute of Limitations for Audits and Inspections of Employer Records. ~~In the absence of fraudulent practices, the~~ The Department shall not audit an employer's records for a period greater than ~~three~~ **five (35)** years for purposes of establishing a tax liability. The ~~three~~ **five (35)** year period shall be determined by, and extend ~~three~~ **five (35)** years back from; the ~~due~~ **due** date ~~that the employer is notified, orally of a quarterly report or in writing by any representative of the Department, of an intent to perform an audit of the records, and shall be deemed to include every quarter which, in whole or in part, falls within the three (3) year period. This statute of limitations shall not apply in any case in which an employer has engaged in fraudulent practices~~ **the date a quarterly report is filed, whichever is later.** ~~(3-30-01)()~~ **()**

~~02a.~~ Tolling of Statute of Limitations. The ~~three~~ **five** (~~35~~) year statute of limitations is tolled for any period in which the employer ~~does not reside within the state~~ **absconds from the state, during any period of the employer's concealment, or during any period when the department's ability to commence administrative proceedings to enforce Chapter 72, Section 1349 of the Idaho Code is stayed by legal proceedings.** (~~3-30-01~~)()

~~03b.~~ Notification of Audits. Employers shall be notified as soon as practicable of an impending payroll records audit for tax liability purposes. This shall allow time in which to agree as to a convenient time and place for audit. Ref. Section 72-1337, Idaho Code. (3-19-99)

~~04c.~~ Frequency of Audits. The frequency of audits or inspections of an employer's records to ensure compliance with the law and Department rules shall be based on the following criteria: (3-30-01)

~~a.i.~~ On the basis of random selection and other selection criteria in accordance with federal requirements; (3-30-01)

~~b.ii.~~ As a result of information received from any source, provided that the information received is of such a nature that it would be reasonable to conduct an audit or inspection of records as a result of that information; or (3-30-01)

~~c.iii.~~ As a result of a previous audit, if the business practices or records of the employer are of such a nature that it would be reasonable for a Department employee to re-inspect or re-audit the records to ensure future compliance with the law. Ref. Section 72-1337, Idaho Code. (3-30-01)

~~05. Statute of Limitations for Collections of Contributions, Penalty and Interest. Administrative proceedings for collection of taxes from subject employers shall be instituted within five (5) years from the date of a final determination, decision or order establishing the employer's liability.~~ (~~3-30-01~~)

~~a. The time limits contained in Subsection 166.05 shall not apply once a tax liability is recorded as a lien against the property of an employer.~~ (~~3-30-01~~)

~~b. If the employer or his representative acknowledges the indebtedness or makes a partial payment thereon, the statute of limitations for collection shall be extended an additional three (3) years from the date of such payment or acknowledgement.~~ (~~3-30-01~~)

062. Execution Against Assets. The Department of Labor, when the situation warrants, shall levy upon or execute against any real or personal property, both tangible and intangible, in which an indebted person has an interest, including any offsets as allowed by Section 67-1026, Idaho Code. Ref. Section 72-1360, Idaho Code. (3-30-01)

073. Relief of Indebtedness. Neither the full running of the statute of limitations nor the writing off of the account as uncollectible relieves an employer of tax indebtedness. Ref. Section 72-1364, Idaho Code. (3-30-01)

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES**

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

DOCKET NO. 15-0401-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Division of Human Resources has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5309, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the temporary/proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 57 through 60.](#)

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donna Weast at (208) 854-3079 or at donna.weast@dhr.idaho.gov.

DATED this 22nd day of November, 2010.

Vicki Tokita
Deputy Administrator
Division of Human Resources
304 N. 8th Street
PO Box 83720, Boise, ID 83720-0066
Main: 208-334-3900 / Fax: 208-334-2438

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

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

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

During the 2010 legislative session, Section 67-5309, Idaho Code, was amended to increase the number of names on a hiring list (register). This rule change will reflect the change made to Idaho Code.

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

The temporary rule is necessary in order to comply with deadlines in amendments to governing law or federal programs.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule change is to align existing rules with Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lee McCormick, 208-854-3069.

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 25, 2010.

DATED this 1st day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-1001

010. DEFINITIONS -- A THROUGH E.

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (7-1-87)

01. Administrator. The Administrator of the Division of Human Resources in the Office of the Governor or delegate for those responsibilities assigned by the administrator to a specific appointing authority. (5-8-09)

02. Agency Classification. A classification of positions unique to an agency. (5-8-09)

03. Allocation. The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)

04. Appeal. Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)

05. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

06. Appointing Authority. The officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any agency. (Ref. Section 67-5302(3), Idaho Code) (5-8-09)

07. Appointment, Limited. The appointment of a person to a classified, position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)

08. Appointment, Nonclassified. The appointment of a person to a position exempt

from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)

09. Appointment, Permanent. The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. (3-16-04)

10. Appointment, Probationary. The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)

11. Appointment, Project Exempt. The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)

12. Appointment, Provisional. The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. (3-16-04)

13. Appointment, Seasonal. An appointment to a regular position in classified service with intermittent work periods. (Ref. Section 67-5302(31), Idaho Code) (3-16-04)

14. Appointment, Temporary. The appointment of a person to a nonclassified position which is of a limited duration, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period for any one (1) agency. Temporary appointments may occur for intermittent periods of time and include recurring assignments. (Ref Section 67-5302(33), Idaho Code) (5-8-09)

15. Base Pay. The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (5-8-09)

16. Certifiable Range. An examination score and a rank on an eligibility register sufficiently high to be among the top ~~ten~~ **twenty-five (25)** available names, plus names of all individuals with scores identical to the ~~tenth~~ **twenty-fifth** ranking eligible, for certification to fill a position in the classification for which the register was established. (~~3-16-04~~)()

17. Classified Service. That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (5-8-09)

18. Commission. As utilized in these rules, refers to the Idaho Personnel Commission as established in Section 67-5307, Idaho Code. (5-8-09)

19. Compensation Plan. The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division of Human Resources and Idaho Personnel Commission rules

and policies, and agency policies governing employee pay. (5-8-09)

20. Compensation Schedule. The pay grades established by the Division of Human Resources and associated rates of pay. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

21. Consultant. An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule Section 050) (5-8-09)

22. Dismissal. The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Section 190 of these rules. (5-8-09)

23. Due Process. As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) (3-16-04)

24. Employment History. The information available to the public without the employee's consent in accordance with Section 9-340(C), Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. (5-8-09)

25. Examination. The application of written tests, oral interviews, performance tests, investigation, physical evaluation, evaluation of education and experience, or any other measure of job-related knowledge and ability, including performance in probationary periods. (4-5-85)

011. DEFINITIONS -- F THROUGH J.

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (5-8-09)

01. General Classification. A classification of positions that is common to more than one (1) participating agency. (5-8-09)

02. Good Cause. The conduct of a reasonable person in the same or similar circumstances. (7-1-87)

03. Hay Method. A methodology for establishing the relative value of jobs and used as a dimension of the pay system. (5-8-09)

04. Hiring List. A hiring list is a subset of a register consisting of the top ~~ten~~ twenty-five (~~10~~25) individuals on the register, plus all individuals tied for the ~~tenth~~ twenty-fifth position, certified as eligible for a specific recruitment. Candidates for reinstatement or transfer may be considered and are provided in addition to the top ~~ten~~ twenty-five (25). (~~5-8-09~~)()

05. Incumbent. Any person holding a classified or non-classified position in state service. (7-1-87)

06. Independent Contractor. Any person, firm, or corporation meeting the Internal Revenue Service's test for an independent contractor or a self-employed person. (Ref. Rule

Section 050)

(5-8-09)

07. Involuntary Transfer. A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

110. NUMBER OF NAMES ON REGISTER.

The Division of Human Resources' staff shall certify a hiring list from the eligibility register, in the order of their scores, a sufficient number of names so that the appointing authority shall be able to select for appointment from among ~~ten~~ **twenty-five (1025)** eligible candidates *successively* for each position to be filled. ~~If an appointment is to be made to one (1) position only, the top ten (10) available eligible candidates shall be certified.~~ If appointments are to be made to more than one (1) position, one (1) additional name shall be added for each vacancy so that the appointing authority shall have ~~ten~~ **twenty-five (1025)** names to consider for each vacancy. The names of all eligible candidates with scores identical to the ~~tenth~~ **twenty-fifth** ranking eligible candidate on the register shall be provided to appointing authorities for selection purposes. (3-16-04)()

IDAPA 15 - DIVISION OF HUMAN RESOURCES

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

DOCKET NO. 15-0401-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Division of Human Resources has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5309, Idaho Code.

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

Subsection 241.02 has been amended based on comments received from interested parties.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 237 through 244.](#)

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 state general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donna Weast at (208) 854-3079 or at donna.weast@dhr.idaho.gov.

DATED this 18th day of November, 2010.

Vicki Tokita
Deputy Administrator
Division of Human Resources
304 N. 8th Street
PO Box 83720

Boise, ID 83720-0066
Main: 208-334-3900
Fax: 208-334-2438

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) Section 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 27, 2010.

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

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

This rulemaking is mostly housekeeping in nature and removes redundant phrases and definitions, removes references to deleted rules/areas, and clarifies or removes language that conflicts with other current rules and practices.

More specifically, this proposed rulemaking removes the definition in 013.10 and the references to “Traded Time”; removes phrases that conflict with rule 144; removes the word “entrance” in 150.05 because acting appointments require permanent status; in 169.04 removes “more responsibility” because that translates into having greater points; in 220.04 removes the words “current agencies” because entitlement is not limited to current information; in 241.02 changes the order of words to clarify the application of absences of less than 2 weeks as it applies to the 12-week period.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a copy of the proposed rule changes was sent out to all state agencies for their review and comments. We gave them a two week period in which they could respond to our proposed changes.

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

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

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 Friday, October 27, 2010.

DATED this 26th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-1002

013. DEFINITIONS -- P THROUGH Z.

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (5-8-09)

01. Pay Line Exception. A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. (5-8-09)

02. Permanent Employee. An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. (5-8-09)

03. Promotion. The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. (5-8-09)

04. Reduction in Pay. A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (3-16-04)

05. Register. A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (3-16-04)

06. Resignation. The voluntary quitting or abandonment of state employment, excluding retirement. (5-8-09)

07. Respondent. The party whose interests are adverse to those of the appellant.

(7-1-93)

08. Suspension. An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Section 190 of these rules. (5-8-09)

09. Termination. The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Section 152 of these rules. (5-8-09)

~~**10. Traded Time.** Those hours an employee agrees to substitute for another employee during scheduled hours of work, where both work in the same capacity, the agreement to substitute is solely at the employees' option, and the agreement is approved by the agency by whatever manner is customary. (7-1-87)~~

110. Transfer. A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (3-16-04)

121. Underfill. The filling of a classification of position with an employee in a classification of lower pay grade to accommodate a training period as approved by the administrator. (3-16-04)

132. USERRA. Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (5-8-09)

143. Workweek. A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Section 073) (12-10-90)

(BREAK IN CONTINUITY OF SECTIONS)

073. CALCULATION OF PAY.

01. Standard Calculation of Pay. For other than police, correctional officers, or fire employees, pay is calculated in the following order: (5-8-09)

a. Holiday pay; (12-10-90)

b. All hours worked on a holiday as overtime; (12-10-90)

c. All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work ~~and traded time;~~ ~~(12-10-90)~~ ()

- d. Vacation, sick and other paid or unpaid leaves; and (12-10-90)
- e. All remaining hours worked at the employee's regular rate of pay. (5-8-09)

02. Shift Differential. Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential is paid in addition to any other compensation. (Ref. Sections 67-5302(20) and 67-5328, Idaho Code; Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. (Ref. Section 67-5309(u), Idaho Code. (5-8-09)

03. Calculation of Pay for Police, Correctional Officers, and Fire Employees. Police, correctional officers, and fire employees on a twenty-eight (28) day work schedule will be compensated as described in Subsections 073.01 and 073.02 of these rules, except that overtime will be calculated based on one hundred sixty (160) hours in a twenty eight (28) day period instead of forty (40) hours in a workweek. (5-8-09)

04. Holiday Pay Calculation. (7-1-87)

a. Paid time off for holidays is a benefit and must be allocated in a substantially similar manner to all employees in the same classification. (5-8-09)

b. A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. (3-16-04)

c. A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x hours normally worked. (3-16-04)

d. To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical "Leave Without Pay," no hours will be coded on the holiday. Therefore, the holiday will not be counted toward the twelve (12) weeks of family medical leave. (5-8-09)

e. If a part-time employee's hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-16-04)

f. Schedules resulting in holiday time off in excess of eight (8) hours may be approved by the appointing authority if included in the agency compensation plan. Appointing authorities may also suspend flex schedules during holiday weeks or otherwise adjust work schedules to ensure internal consistency. (5-8-09)

05. Reduction of Salary. The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by

the appointing authority for disciplinary reasons enumerated in Section 190 of these rules. (5-8-09)

06. Salary Administration. Each agency must develop a compensation plan. Each agency compensation plan must be designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

07. Salaries for Temporary Appointments. Except as provided for in these rules, salaries for employees hired under temporary and project-exempt appointments will be governed by Section 59-1603, Idaho Code. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

101. TYPES OF ELIGIBILITY REGISTERS.

There are four (4) kinds of eligibility registers: (4-5-85)

01. Reemployment Preference Registers. Registers with reemployment preference for a given classification will contain the names of classified employees of permanent status who have been laid off ~~or notified of a pending layoff~~ except limited service appointments. (See Sections 140 ~~and 146~~ of these rules). ~~(5-8-09)~~()

02. Agency Promotional Registers. Agency promotional registers for a given classification will contain the names of classified employees in a given agency who successfully passed an agency promotional examination for the class. (Ref. Rule Subsection 086.05) (5-8-09)

03. Statewide Promotional Registers. Statewide promotional registers for a given classification will contain the names of all classified employees in all state agencies who successfully passed a statewide promotional examination for the class. (Ref. Rule Subsection 086.05) (5-8-09)

04. Open Competitive Registers. Open competitive registers for a given classification will contain the names of applicants who successfully passed an open competitive examination for the classification. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.

01. Reemployment Preference Register. New appointments to a classification within an agency are not permissible if there is an agency reemployment preference register (Ref. Rule Subsection 101.01) for that classification with names of eligibles who are willing to accept employment. (5-8-09)

~~02. **Credited State Service.** Except as provided by Section 040 and Subsection 250.02 of these rules, no classified credited state service accrues to employees for any service under temporary, project exempt, or nonclassified appointments. (5-8-09)~~

032. Probationary Period Required. All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification are probationary appointments except as otherwise provided in Sections 040 and 150 of these rules. (5-8-09)

043. Provisional Appointment. (7-1-93)

a. A provisional appointment may be authorized in the absence of an adequate register. (Ref. Section 67-5309(k), Idaho Code) (5-8-09)

b. In nominating a person for provisional appointment, the appointing authority will transmit to the administrator an application for employment of the nominee. If the applicant meets the minimum qualifications established for the classification, the nominee may be provisionally appointed to fill an existing vacancy in a position for no longer than thirty (30) calendar days after establishment of an adequate register. Successive provisional appointments of the same individual or successive provisional appointments to the same position will not be permitted unless specifically authorized by the administrator. (3-16-04)

c. Provisional incumbents will be given opportunity to take the examination for the classification of position. Any provisional employee who fails to pass such an examination within certifiable range or who has an opportunity to take such an examination and has not done so will be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.

01. Priority for Reemployment by Agency that Conducted the Layoff. (3-16-04)

a. The employee who has been laid off, ~~or given official, written notice of a pending layoff date (Ref. Rule Subsection 143.05)~~ will be offered reemployment to a position in the classification from which laid off ~~or layoff is pending~~, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that agency. Appointing authorities may reassign or transfer individuals who are in the same classification within their agency but may not demote, promote, reclassify, or make acting appointments to that classification. If that agency determines a need to fill that classification, the employee ~~scheduled for lay off or~~ who was laid off has first priority for that position. (Ref. Rule Subsections 125.04 and 125.08) Extenuating circumstances due to short term budget, workload, location, or other complexities may be used by the appointing authority to

request a temporary waiver of this rule by the administrator.

~~(5-8-09)~~()

b. When attempting to fill vacancies for a classification where a lay off occurred, the agency will provide an opportunity to interview and will make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Subsection 241.02 of these rules and those that took a voluntary demotion in lieu of layoff. (5-8-09)

c. Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. If the pay minimum has increased, see Subsection 072.03 of these rules. (5-8-09)

02. Consideration for Hire by Other Agencies. For promotional opportunities, internal agency candidates are normally considered before outside recruitment occurs, including other agencies' laid off candidates. However, individuals who have been laid off must be offered the opportunity to interview before other agencies consider candidates from statewide promotional or open-competitive recruitments. (3-16-04)

03. Employment by Other Agency. Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. (3-16-04)

04. Return to Register. If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve (12) month period if otherwise eligible. (5-8-09)

146. ~~INTERVIEWS FOR PROSPECTIVE LAYOFFS (RESERVED).~~

~~Any employee who has been notified or identified as likely to be affected by a layoff may request to be placed on a register for the classification from which the layoff will occur. (Ref. Rule 145.01.a.) All agencies shall offer an interview to these individuals when attempting to fill such vacancies through statewide promotion or open competitive recruitments. (Ref. Rule 145.02)~~
(3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

169. PROMOTIONS.

01. Use of Promotional Registers. (7-1-93)

a. Preference for Promotion. Whenever practical, a vacancy in a classified position must be filled by the promotion of an employee in the agency in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) (5-8-09)

b. Exception. An appointing authority may request that a position be filled from a statewide promotional register (Ref. Rule Subsection 101.03) or an open competitive register (Ref. Rule Subsection 101.04) whenever he determines that such an appointment will best serve the interests of the agency. (5-8-09)

c. Agency Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is an agency register with reemployment preference status (Ref. Rule Subsection 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. (5-8-09)

02. Interagency Promotions. All interagency promotions must be made using statewide promotional registers (Ref. Rule Subsection 101.03) (5-8-09)

03. Eligibility for Promotion. Promotional appointees must have permanent status (Ref. Rule Section 159) and must meet the minimum qualifications of the promotional classification. (5-8-09)

04. Promotion, In-Grade. To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position occupied in one classification to a position in another classification having greater points, ~~more responsibility~~, or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. (5-8-09)()
169.04 Promotions-Promotion, in grade

(BREAK IN CONTINUITY OF SECTIONS)

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Division of Human Resources maintains a service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (5-8-09)

b. Service records or a facsimile thereof for classified employees must be maintained permanently by the administrator. (5-8-09)

c. Any employee may at all reasonable times during business hours review his service record maintained in the Division of Human Resources or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. (5-8-09)

02. Administrative Records. The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (5-8-09)

03. Employee Personnel Action Documents. The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (5-8-09)

04. Transfers, Reemployment and Promotions Between Agencies. When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and ~~current agencies~~ performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) ~~(5-8-09)~~()

(BREAK IN CONTINUITY OF SECTIONS)

241. WORKERS COMPENSATION ~~AND~~ OR DISABILITY.

01. Use of Leave in a Workers Compensation Claim. In the event of a disability incurred on the job covered by workers compensation, the employee will be given the choice of either: (5-8-09)

a. Leave of absence without pay while receiving workers compensation; or (5-8-09)

b. Utilizing a portion of accrued sick leave to supplement workers compensation to maintain his regular salary; however, no appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. (5-8-09)

02. Layoff After Twelve Weeks' Disability. If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to fully return to work after twelve (12) weeks' absence during any consecutive fifty-two (52) week period or when accrued sick leave has been exhausted, whichever is longer, the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The twelve (12) weeks' period of absence need not occur consecutively. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. (Ref. Rule Subsection 101.01) ~~(5-8-09)~~

~~**α.** If an employee is not eligible for the protections of the Family and Medical Leave Act (FMLA), the employee may only take a maximum of twelve (12) weeks absence due to their disability every twelve (12) month period. The period of absence for such an employee is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks and return to work as part of a rehabilitation program does not interrupt the calculation of the period~~

~~of absence.~~

~~(5-8-09)~~

~~b.~~ Conditional releases will be considered in accordance with the Americans with Disabilities Act. ~~(3-16-04)~~()

(BREAK IN CONTINUITY OF SECTIONS)

262. OVERTIME.

01. Employing Agencies. The state is considered as one (1) employer for determining the number of hours an employee works. If an employee works for more than one (1) agency, the agency employing the employee when the overtime occurs is liable for compensatory time off or cash compensation as provided by law. (5-8-09)

02. Compensation for Overtime. Overtime accrual and compensation for classified employees is covered by Sections 67-5328 and 59-1607, Idaho Code, for nonclassified employees. Overtime is defined in Section 67-5302(20), Idaho Code. Overtime does not include any time, such as ~~traded time, or~~ occasional or sporadic work, which ~~are~~ **is** excluded from the overtime calculation by federal law. ~~(5-8-09)~~()

03. Modification of Workweek or Schedule. No agency will alter a previously established work week for the purpose of avoiding overtime compensation. An agency may modify the employee's regular schedule of work to avoid or minimize overtime. (5-8-09)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code, and 42 CFR Part 435.4(1)(B).

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 7, 2010 Idaho Administrative Bulletin, Vol. 10-7, pages 18 and 19.

The proposed rule added a definition of a “financially deprived child” and the eligibility criteria for a “financially deprived child” under Section 400, Aid to Families with Dependent Children (AFDC) - Related Budget Unit. The change has no impact on a person’s eligibility, and continues the Department’s current policy in compliance with federal regulations.

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

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

DATED this 27th day of September, 2010.

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

Boise, ID 83720-0036
phone: (208) 334-5564;
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221, Idaho Code, notice is hereby given this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code, and 42 CFR Part 435.4(1)(B).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

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

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

The definition of a “financially deprived child” and the eligibility criteria for a “financially deprived child” are being added to these rules under Section 400, Aid to Families with Dependent Children (AFDC) - Related Budget Unit. This change will have no impact on a person’s eligibility, and continues the Department’s current policy in compliance with federal regulations.

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

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

This rulemaking has no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule clarifies a policy that is already implemented.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 4th day of June, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-1001

400. AFDC-RELATED BUDGET UNIT.

A budget unit is a person or group of persons who are relatives of specified degree, as defined in Section 011 of these rules, who live in the same home with ~~an eligible~~ financially-deprived dependent child. Their needs, income, and resources are counted as a unit for AFDC adult eligibility. Eligibility is based on the number of budget unit members. ~~(3-30-07)~~()

01. Member of More Than One Budget Unit. No person may receive benefits in more than one (1) budget unit during the same month. (3-30-07)

02. More Than One Medicaid Budget Unit in Home. If there is more than one (1) Medicaid budget unit in a home, each budget unit is considered a separate unit. (3-30-07)

03. Budget Units Not Separate. Budget units cannot be separate if any member is a required member of both units. The units must be combined and treated as one (1) unit. (3-30-07)

04. Financially-Deprived Child. Adults are not eligible for AFDC-related Medicaid unless they are the biological or adoptive parent, or relative of specified degree, of a child who is financially deprived. Financial deprivation exists when a child meets one (1) of the criteria below: ()

a. A child's countable income and resources meet the financial requirements for the AFDC program under 42 CFR Part 435.4(1)(B) and Sections 325 and 411 of these rules; or()

b. A child receives SSI income. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code, and Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009," and federal Public Law no. 111-118, Sec. 8120.

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

This rulemaking provided more choices for Idaho citizens seeking health coverage for their children, and streamlined the application process for children and families whose U.S. citizenship must be verified. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 245 through 250.](#)

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:

The total anticipated fiscal impact to the state general fund is \$120,714, which is the state's portion at the current federal match rates for this rulemaking.

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

DATED this 5th day of November, 2010.

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

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THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATES: The effective dates of these temporary rules are: **April 1, 2009, December 19, 2009, January 1, 2010, and September 1, 2010.**

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code, Section 211 of the “Children’s Health Insurance Program (CHIP) Reauthorization Act of 2009,” and federal Public Law no. 111-118, Sec. 8120.

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 20, 2010.

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

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

1. This rulemaking contains two changes that provide more choices for Idaho citizens seeking health coverage for their children, and will streamline the application process for children and families whose U.S. citizenship must be verified.

a. This rule change will allow for any child eligible for SCHIP to be enrolled in Children’s Access Card, which means that children between the ages of 6 and 19 with family income exceeding 100% of FPL and less than or equal to 185% of FPL can also qualify for Children’s Access Card.

b. This rule change will allow for the U.S. citizenship and identity of first-time applicants for Medicaid and SCHIP to be verified through a data match with the Social Security Administration (SSA), when the SSA has previously verified citizenship and identity.

2. This rule change also updates the eligibility time period for special immigrants based on federal regulations that extended the eligibility time period.

3. Also added are requirements for children eligible for coverage under Title XXI SCHIP to meet the verification of U.S. citizenship and identity requirements.

4. Lastly, language was added stating that an individual found eligible for Medicaid will receive services for 90 days while verification of U.S. citizenship and identity are pending.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate. The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Number 1, as described in the descriptive summary, provides a benefit by giving additional families a choice between having the Department provide direct health coverage for their children in the form of the SCHIP program, and purchasing private health insurance for their children, with the Department subsidizing the child's premium. This rulemaking also helps participants applying for Medicaid as they will not have to make multiple trips to Department offices in order to allow Department staff to view original birth certificates or other paper documents.

Rule changes being made in Numbers 2, 3, and 4, stated in the descriptive summary, are required by federal legislation, i.e., Number 2 - federal Public Law no. 111-118, Sec. 8120; Number 3 and 4 - Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009."

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

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

The total anticipated fiscal impact to the state general fund is \$120,714, which is the state's portion at the current federal match rates for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes are due to federal regulations.

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

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-1002

220. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible, an individual must be a member of one (1) of the following groups: (3-30-07)

- 01. U.S. Citizen.** A U.S. Citizen; (3-30-07)
- 02. U.S. National, National of American Samoa or Swain's Island.** A U. S. national, or a national of American Samoa or Swain's Island. (3-30-07)
- 03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)
 - a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
 - b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
 - c.** The child is under eighteen (18) years of age; (3-30-07)
 - d.** The child is a lawful permanent resident; and (3-30-07)
 - e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who is currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; (3-30-07)
- 05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who were honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard for a reason other than their citizenship status, or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; (3-30-07)
- 06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, who is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c), who remained continuously present in the U.S. until he became a qualified non-citizen; (3-30-07)
- 07. Non-Citizen Entering On or After August 22, 1996.** A non-citizen who entered the U.S. on or after August 22, 1996, and who is: (3-30-07)

- a.** A refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)
- b.** An asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)
- c.** An individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)
- d.** An Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-30-07)
- e.** A Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act under Section 501(e) of P.L. 96-422 (1980), and can be eligible for seven (7) years from their date of entry; (3-30-07)
- 08. Qualified Non-Citizen Entering On or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), who entered the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years; (3-30-07)
- 09. American Indian Born in Canada.** An American Indian born in Canada, under 8 U.S.C. 1359; (3-30-07)
- 10. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., who is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); (3-30-07)
- 11. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; and (3-30-07)
- 12. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-30-07)
- a.** Is under the age of eighteen (18) years; or (3-30-07)
- b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-30-07)
- i.** Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-30-07)
- ii.** Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

13. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, ~~is eligible for eight (8) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status.~~ (3-29-10)()

14. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, ~~is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status.~~ (5-8-09)()

221. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

Any individual who participates in a Title XIX Medicaid or Title XXI SCHIP funded program must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Section 225 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

224. ELIGIBILITY FOR APPLICANTS AND MEDICAID PARTICIPANTS WHO DO NOT PROVIDE CITIZENSHIP AND IDENTITY DOCUMENTATION.

01. Applicants. ~~Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation.~~ Medicaid applicants have ninety (90) days to provide proof of U.S. citizenship and identity. Medicaid benefits will be approved pending verification of U.S. citizenship and identity if the participant meets all other eligibility requirements. Medicaid will be denied if the applicant refuses to obtain documentation. (3-30-07)()

02. Participants. Any Medicaid participant, who does not provide proof of citizenship and identity documentation at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: (3-30-07)

a. Does not meet other eligibility criteria required in this chapter of rules; ~~or~~ (3-30-07)()

b. Refuses to obtain the documentation; ~~or~~ (3-30-07)()

c. Fails to provide the documentation within ninety (90) days of a request for the documentation. ()

225. INDIVIDUALS CONSIDERED AS MEETING THE U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

The individuals listed in Subsections 225.01 through 225.05 of this rule meet the U.S. citizenship and identity requirements and are not required to provide documentation of citizenship and identity. (4-2-08)

- 01. Supplemental Security Income (SSI) Recipients.** (4-2-08)
- 02. Social Security Disability Income (SSDI) Recipients.** (4-2-08)
- 03. Individuals Determined by SSA to be Entitled to Receive Medicare.** (4-2-08)
- 04. Adoptive or Foster Care Children Receiving Assistance Under Title IV-B or Title IV-E of the Social Security Act.** (4-2-08)
- 05. Individuals Deemed Eligible for Medicaid as a Waived Newborn Under Section 530 of these Rules.** (3-29-10)
- 06. Individuals Whose Name, Social Security Number, and Declaration of U.S. Citizenship Have Been Confirmed to Match the Records of the SSA.** ()

(BREAK IN CONTINUITY OF SECTIONS)

251. SPONSOR DEEMING.

Income and resources of a legal non-citizen's sponsor and the sponsor's spouse are counted in determining eligibility. *Sponsor deeming is not required for the following non-citizens:* (5-8-09)()

- a:** Afghan special immigrants as described in Section 220 of these rules; or* (5-8-09)
- b:** Iraqi special immigrants as described in Section 220 of these rules.* (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

525. CONTINUOUS HEALTH CARE ASSISTANCE ELIGIBILITY FOR CHILDREN UNDER AGE NINETEEN.

Children under age nineteen (19), who are found eligible in an initial determination or a renewal, remain eligible for a period of twelve (12) months. The twelve (12) month continuous eligibility period does not apply if, for any reason, eligibility was determined incorrectly. (3-30-07)

- 01. Reasons Continuous Eligibility Ends.** Continuous eligibility for children stops for one (1) of the following reasons: (3-30-07)
 - a.** The child is no longer an Idaho resident; or (3-30-07)

- b. The child dies; or (3-30-07)
- c. The participant requests closure; or (3-30-07)
- d. The child turns nineteen (19) years of age as defined in Subsection 010.05 of these rules. (3-30-07)

02. Children Not Eligible for Continuous Eligibility. Children are not eligible for continuous eligibility for one (1) of the following reasons: (3-30-07)

- a. A child is approved for emergency medical services; ~~or~~ (5-8-09)()
- b. A child is approved for pregnancy-related services; ~~;~~ (5-8-09)()
- ~~c. A child is an Afghan special immigrant and is approved for eight (8) months; or (3-29-10)~~
- ~~d. A child is an Iraqi special immigrant and is approved for eight (8) months. (5-8-09)~~

(BREAK IN CONTINUITY OF SECTIONS)

560. CHOOSING CHILDREN'S ACCESS CARD.

Participants may choose Children's Access Card for a child when their countable family income ~~exceeds one hundred thirty three percent (133%) and is less than or equal to one hundred eighty-five percent (185)% of the Federal Poverty Guideline for his family size~~ meets the standards of Subsection 560.01 or 560.02 of this rule. (3-30-07)()

01. Children Under the Age of Six. Family income exceeds one-hundred thirty-three percent (133%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty Guideline for his family size. ()

02. Children Six Years of Age or Older. Family income exceeds one-hundred percent (100%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty guideline for his family size. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1002
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-203, Idaho Code.

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

The asset test is being reinstated with an increase in the amount allowed for all the Food Stamp households. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 251 through 253.](#)

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:

The Department anticipates a fiscal impact to state general funds due to this rulemaking. The impact will be for operating costs to cover the required automation changes to the Idaho Benefits Information System (IBES), the Department's automated system which is funded with existing IBES funding. The actual Food Stamp benefits are 100% federally-funded and any change in the amount distributed does not impact state general funds.

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

DATED this 5th day of November, 2010.

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

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The Department temporarily suspended the asset test for the Food Stamp Program (see the July 7, 2010, Idaho Administrative Bulletin, Docket 16-0305-1001) due to the lack of employment and the economy not recovering in Idaho. The temporary rule currently in place will expire and the text will revert back to the previously codified text unless the Department reinstates an asset test to replace these rules. The proposed rules in this Docket 16-0305-1002 will become effective on adjournment of the 2011 Legislative Session. This docket also reflects changes that are being made to the previously codified rules that were in effect prior to the adoption of the temporary rules.

The asset test will be reinstated with an increase in the amount allowed for all Food Stamp households. In order to qualify for the program, a household's assets, as defined by Food Stamp rules and federal regulations, cannot exceed \$5,000.

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

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

The Department anticipates a fiscal impact to state general funds due to this rulemaking. The impact will be for operating costs to cover the required automation changes to the Idaho Benefits Information System (IBES), the Department's automated system which is funded with existing IBES funding. The actual Food Stamp benefits are 100% federally-funded and any change in the amount distributed does not impact state general funds.

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

rulemaking was not conducted because this rule change is being made to meet legislative guidance.

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

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

DATED this 26th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1002

178. CATEGORICALLY ELIGIBLE HOUSEHOLDS.

Households with all members meeting one (1) of the criteria below are categorically eligible for Food Stamps. ~~Categorically eligible households are resource and income eligible.~~ The Department will not compute resource eligibility. The Department will not compute gross or net income eligibility. Categorically eligible households must meet all other Food Stamp eligibility criteria. Categorically eligible households have the same rights as other households.

(6-1-94)()

01. Cash Benefits. All household members are approved for, or already ~~get~~ receive, TAFI or AABD or SSI cash benefits. The household is categorically eligible. (7-1-98)()

02. Benefits Recouped. All household members have AABD or SSI benefits being recouped. The household is categorically eligible. (7-1-98)

03. Grant Less Than Ten Dollars. All household members not ~~getting~~ receiving TAFI or AABD or SSI because their grant is less than ten dollars (\$10). The household is categorically eligible. (7-1-98)()

179. HOUSEHOLDS NOT CATEGORICALLY ELIGIBLE.

The households listed below ~~are~~ not categorically eligible for Food Stamps. (6-1-94)()

01. Medicaid Only. Households are not categorically eligible if any household member ~~gets~~ receives Medicaid benefits only. (6-1-94)()

02. IPV. Households are not categorically eligible, if any household member is disqualified for a Food Stamp Intentional Program Violation (IPV). (6-1-94)

03. Work Requirements. Households are not categorically eligible, if any household member fails to comply with the Food Stamp work requirements. (6-1-94)

04. Ineligible Legal Non-Citizen or Student. Households are not categorically eligible if any member is an ineligible legal non-citizen or ineligible student. (7-1-98)

05. Nonexempt Institution. Households are not categorically eligible if any member is a person living in a nonexempt institution. (6-1-94)

180. CATEGORICAL ELIGIBILITY ENDS.

Categorical eligibility ends when ~~one~~ the household member is no longer eligible for TAFI, AABD or SSI. If the household is still eligible under Food Stamp rules, the household will continue to ~~get~~ receive Food Stamps. If categorical eligibility ends and household income or resources exceed the Food Stamp limits, the household is no longer eligible for Food Stamps. Food Stamps will stop after timely advance notice. (7-1-98)()

181. ~~MIXED HOUSEHOLDS~~ (RESERVED).

~~Households with at least one (1) member meeting the conditions below are mixed households. Resources of members meeting the conditions below are excluded. Resources of the other household members are counted.~~ (6-1-94)

~~**01. Cash Benefits.** Household member is approved for, or already gets, TAFI or AABD or SSI cash benefits.~~ (7-1-98)

~~**02. Benefits Recouped.** Household member has AABD or SSI benefits being recouped.~~ (7-1-98)

~~**03. Grant Less Than Ten Dollars.** Household member not getting TAFI or AABD or SSI because the grant is less than ten dollars (\$10).~~ (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

301. DETERMINING RESOURCES.

~~Determine the countable resources available to the household by projecting resources on a month by month basis.~~ The resources of all household members are counted unless the resource is excluded. (6-1-94)()

(BREAK IN CONTINUITY OF SECTIONS)

303. COUNTING RESOURCES ~~FOR APPLICANTS.~~

At the time of application or recertification, a household must report all countable resources it has ~~or expects to receive~~. Resources are identified and evaluated, as of the Food Stamp interview date, to determine if they are counted or excluded. (4-11-06)()

304. ~~COUNTING RESOURCES FOR RECIPIENTS~~ (RESERVED).

~~Determine resources for recipients throughout the certification period as described in Section 601~~

of these rules.

(4-11-06)

~~01. **Anticipated Resources.** If resources are anticipated at any time during an upcoming month or months, a resource determination must be made. Anticipated resources affect the entire month's eligibility for the month of receipt.~~ (6-1-94)

~~02. **Unanticipated Newly Acquired Resources.** Consider unanticipated newly acquired resources available as of the first day of the month following the receipt of the new resource. If the client spends or uses up the resource before the first day of the next month, the resource will not be counted the next month.~~ (6-1-94)

305. RESOURCE LIMIT.

The Food Stamp resource limit ~~for households with one (1) member who is age sixty (60) or over, or disabled,~~ is ~~three~~ **five** thousand dollars (\$~~3~~**5**,000). ~~The resource limit is three thousand dollars (\$3,000), even if the person age sixty (60) or over is the only person in the household. The resource limit for other households is two thousand dollars (\$2,000). To be considered as disabled, a person must meet one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. Beginning October 1, 2008, the resource limit will be adjusted for inflation using the Consumer Price Index, rounded down to the nearest two hundred and fifty dollars (\$250). Each adjustment is based on the unrounded amount for the prior twelve (12) month period.~~

(5-8-09)()

~~306. **CHANGE IN RESOURCE LIMIT.**~~

~~The Food Stamp resource limit changes from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) the month a household member turns age sixty (60) or when the household member is disabled and meets one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. The resource limits will be adjusted for inflation using the Consumer Price Index beginning October 1, 2008.~~

(5-8-09)

~~307. **RESOURCES AND CHANGE IN HOUSEHOLD MEMBERS.**~~

~~A change in household members can change the resource limit. If a household gains one member age sixty (60) or older, or who is disabled, the resource limit changes the month the Department adds the member to the Food Stamp household. If a household loses all members age sixty (60) or older, or who is disabled, the resource limit changes the month the Department removes the member from the Food Stamp household.~~

(3-20-04)

306. -- 307. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

380. ~~RESOURCES PREVIOUSLY PRORATED AS INCOME EXCLUDED~~ **(RESERVED).**

~~Resources previously prorated as income are excluded as resources. Prorated income may be loans to persons attending school or self-employed persons, paid in amounts to cover several months. After the proration period, the total amount of combined funds is a countable resource. If this money is combined with countable funds, such as a bank account, the prorated amount is excluded for the proration period.~~

(7-1-97)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1003
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-203, Idaho Code, Public Law 111-118 Section 8120, and 7 CFR 273.11(c)(1).

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

These rule changes were made to align the food stamp program rules with federal regulations and other benefit programs to improve accuracy and processing when determining eligibility. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 254 through 263.](#)

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

There is no anticipated fiscal impact to the state general fund due to this rulemaking. The food stamp program is 100% federally-funded.

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

DATED this 5th day of November, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rules are: **December 19, 2009; January 1, 2010; July 1, 2010; and October 1, 2010.**

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-203, Idaho Code, Public Law 111-118 Section 8120, and 7 CFR 273.11(c)(1).

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 20, 2010.

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

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

These rule changes are being made to align the food stamp program rules with federal regulations and other benefit programs. These changes will improve the Department's accuracy and processes when determining participant eligibility for food stamp benefits. The changes include clarification of income that is excluded, special immigrants with refugee status, process for returned mail and adjustment of benefits when a participant's death becomes known to the Department.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule changes is appropriate because they confer benefits.

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

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

There is no anticipated fiscal impact to the state general fund due to this rulemaking. The food stamp program is 100% federally-funded.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are being done to confer benefits and align with federal regulations.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-1003

204. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible for Food Stamps, an individual must meet the requirements specified in 7 CFR 273.4, "Citizenship and alien status." In addition, special immigrants from Iraq and Afghanistan have ~~limited eligibility per~~ refugee status under Public Laws ~~110-161, 110-181, and~~ 111-~~118~~, Subsection ~~602(b)(8)~~ 8120. ~~(3-29-10)()~~

(BREAK IN CONTINUITY OF SECTIONS)

219. CIRCUMSTANCES UNDER WHICH FOOD STAMP PARTICIPATION IS PROHIBITED.

01. Prohibition from Receiving Food Stamp Benefits. An individual is prohibited from receiving Food Stamp benefits ~~in the same month as~~ at the time of application if he: ~~(4-6-05)()~~

- a. Receives tribal commodities; (4-6-05)
- b. Is incarcerated; (4-6-05)
- c. Is in an institution; (4-6-05)

- d. Is in foster care and the foster parents are receiving a cash benefit for providing care and maintenance for the child; ~~or~~ ~~(4-11-06)~~()
- e. Receives Food Stamp benefits in another household; or ~~(4-6-05)~~()
- f. Is deceased. ()

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

(BREAK IN CONTINUITY OF SECTIONS)

402. UNEARNED INCOME.

Unearned income includes, but is not limited to income listed below: (6-1-94)

- 01. Public Assistance (PA).** Payments from SSI, TAFI, AABD, GA, or other Public Assistance programs are unearned income. (7-1-98)
- 02. Retirement Income.** Payments from annuities, pensions, and retirement are unearned income. Old age, survivors, or Social Security benefits are unearned income. (6-1-94)
- 03. Strike Benefits.** Strike benefits are unearned income. (6-1-94)
- 04. Veteran's Benefits.** Veteran's benefits are unearned income. (6-1-94)
- 05. Disability Income.** Disability benefits are unearned income. (6-1-94)
- 06. Workers' Compensation.** Workers' Compensation is unearned income. (6-1-94)
- 07. Unemployment Insurance.** Unemployment Insurance is unearned income. (6-1-94)
- 08. Contributions.** Contributions are unearned income. (6-1-94)
- 09. Rental Property Income.** Rental property income, minus the cost of doing business, is unearned income if a household member is not managing the property at least twenty (20) hours per week. (6-1-94)
- 10. Support Payments.** Support payments, including child support payments, are unearned income. (6-1-94)
- 11. Alimony.** Alimony payments are unearned income. (6-1-94)
- 12. Education Benefits.** Educational scholarships, grants, fellowships, deferred

payment loans, and veteran's educational benefits ~~exceeding excluded amounts~~ are **excluded** unearned income. ~~(6-1-94)~~()

13. Government Sponsored Program Payments. Payments from government sponsored programs are unearned income. (6-1-94)

14. Dividends, Interest, and Royalties. Dividends, interest, and royalties are unearned income. **Interest income is excluded unearned income.** ~~(6-1-94)~~()

15. Contract Income. Contract income from the sale of property is counted as unearned income. (6-1-94)

16. Funds From Trusts. Monies withdrawn from trusts exempt as a resource are unearned income. Dividends paid or dividends that could be paid from trusts exempt as a resource are unearned income. (7-1-97)

17. Recurring Lump Sum Payments. Recurring lump sum payments are unearned income. (7-1-98)

18. Prizes. Cash prizes, gifts and lottery winnings are unearned income. (6-1-94)

19. Diverted Support or Alimony. Child support or alimony payments, diverted by the provider to a third party, to pay a household expense are unearned income. (6-1-94)

20. Agent Orange Payments. Payments made under the Agent Orange Act of 1991 and disbursed by the U.S. Treasury are unearned income. (6-1-94)

21. Garnishments. Garnishments from unearned income are unearned income. (6-1-94)

22. Tribal Gaming Income. Tribal gaming income is unearned income. The participant can choose to count the income in the month received, or prorate the income over a twelve (12) month period. (4-5-00)

23. Other Monetary Benefits. Any monetary benefit, not otherwise counted or excluded, is unearned income. (6-1-94)

403. -- 404. (RESERVED).

405. EXCLUDED INCOME.

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

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

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

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

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

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

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

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

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

09. Third Party Payments. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. (3-20-04)

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

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

a. The prorated share of the nonhousehold members if the portion cannot be

identified. (6-1-94)

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

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

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

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

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

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

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

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

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

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

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

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

15. HUD Family Self-Sufficiency (FSS) Escrow Account. The federal exclusion for these funds are only excluded while the funds are in the escrow account or being used for a HUD approved purpose. See Section 363 of these rules for further clarification. (4-11-06)

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

(BREAK IN CONTINUITY OF SECTIONS)

415. EDUCATIONAL INCOME.

Educational income includes deferred repayment educational loans, grants, scholarships,

fellowships, and veterans' educational benefits. The school attended must be a recognized institution of post secondary education, a school for the handicapped, a vocational education program, or a program providing completion of a secondary school diploma, or equivalent. ~~Title IV and BIA e~~ Educational income is excluded. ~~Expenses may be deducted from educational income not excluded. Proof of expenses must be provided. Educational income is computed using steps in Subsections 415.01 through 415.06.~~ (6-1-94)()

~~01. Step 1. Determine available income received for education. Exclude Title IV and BIA educational income.~~ (6-1-94)

~~02. Step 2. Deduct the amount for origination fees and insurance premiums from any educational loans.~~ (6-1-94)

~~03. Step 3. Deduct the largest amounts used for or earmarked as an allowance. The allowance is determined by the school, institution, or program. Do not deduct an allowance for living expenses. Deductible allowances are:~~ (6-1-94)

~~a. Tuition allowance.~~ (6-1-94)

~~b. Mandatory fees allowance. This includes rental or purchase of equipment, materials, and supplies related to the course of study.~~ (6-1-94)

~~c. Books, supplies, and transportation allowance.~~ (6-1-94)

~~04. Step 4. Deduct personal expenses incidental to attending the school, institution, or program. The expenses are determined by the school. Do not deduct living expenses.~~ (6-1-94)

~~05. Step 5. Deduct a child care allowance as determined by the school, institution, or program.~~ (6-1-94)

~~06. Step 6. The remaining income is counted in the Food Stamp budget by prorating it over the period of intended use.~~ (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

509. TYPES OF INCOME TO BE AVERAGED.

Types of income to be averaged are listed below. Income for a destitute migrant or seasonal farm worker household is not averaged. (3-30-07)

01. Self-Employment Income. Average self-employment income. (6-1-94)

02. Contract Income. Average contract income over the period of the contract, if not received on an hourly or piecework basis. Households with averaged contract income include school employees, share croppers and farmers. These households do not include migrants or seasonal farm workers. (6-1-94)

~~03. Scholarships or Education Loans. Average scholarship, deferred educational loan, or other educational grant income, after exclusions, over the period of intended use. Scholarships or education loans may cover part of a month. A partial month is counted as a whole month to determine the period of intended use. (6-1-94)~~

~~a. If education benefits are received in the middle of the coverage period average them over the entire period, after deducting allowable expenses. Count the average monthly amount for only the remaining months in the period covered. No overissuance exists for the previous months. (6-1-94)~~

~~b. If education costs are incurred and verified after the first month of the school term, average the expenses over the entire period of intended use. Deduct only the average monthly amount for the remaining months in the period of intended use. (6-1-94)~~

043. Income Received Less Often Than Monthly. When receipt of income is less often than monthly, the anticipated income can be averaged over the period intended to cover to determine the average monthly income. (6-1-94)

054. Child Support. Child support income can be averaged to make a valid projection for ongoing income. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

531. COMPUTING GROSS INCOME.

Compute gross Food Stamp income by performing the steps in Subsections 531.01 through 531.06 of this rule. (6-1-94)

01. Step 1. Project wages and salaries for the month for each household member. Do not count excluded income. (6-1-94)

a. Add wages and salaries for the household. (6-1-94)

b. Add net self-employment income. (6-1-94)

02. Step 2. Subtract any loss from a farmer's self-employment income. (6-1-94)

03. Step 3. Project unearned income, ~~including educational income,~~ for the month for each household member. Do not count excluded income. Add unearned income for the household. (6-1-94)()

04. Step 4. Add unearned income to earned income. (6-1-94)

05. Step 5. Subtract any remaining loss from a farmer's self-employment income. (6-1-94)

06. Step 6. The income remaining is gross income for Food Stamp eligibility. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

537. DEPENDENT CARE RESTRICTIONS.

Dependent care restrictions are listed below: (6-1-94)

01. Care by Household Member. Dependent care cannot be deducted if the care is provided by another household member. (6-1-94)

02. In-Kind Payment. Dependent care cannot be deducted if the payment is in-kind, such as food or exchanges for shelter. (6-1-94)

03. Vendor Payment. Dependent care cannot be deducted if paid by vendor payment. (6-1-94)

~~**04. Education Exclusion.** Dependent care cannot be deducted if income for dependent care is excluded from educational income. (6-1-94)~~

054. Spouse Can Give Care. Dependent care cannot be deducted if the spouse in the home is physically capable of the dependent care and is not working, seeking work, or registered for work. (6-1-94)

065. Paid or Reimbursed Dependent Care. Dependent care cannot be deducted if paid or reimbursed under a federal child care program. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

613. CHANGES ON WHICH THE DEPARTMENT MUST ACT.

01. General Changes on Which Department Must Act. Regardless of whether the Food Stamp Benefit will increase or decrease, the Department must act as described in Sections 617 and 618 of these rules when: (4-11-06)

a. The household requests closure; (4-6-05)

b. The TAFI or AABD grant amount changes; (4-6-05)

c. An individual is sanctioned or disqualified; (4-6-05)

d. The change would cause prohibited participation, see Section 219 of these rules;

(4-11-06)

e. Information is received from a source the Department has defined as verified upon receipt in Section 012 of these rules; (4-11-06)

f. The change is required to be reported and the change is expected to continue into the next month; (4-6-05)

g. The Food Stamp benefit will increase and the change is not a change in expenses; (4-11-06)

h. The household reports that all members of the household moved out of the state of Idaho; ~~or~~ (3-29-10)()

i. The U.S. Post Office returns mail to the Department because the household moved and left no forwarding address as provided in Section 735 of these rules. ()

02. Changes Resulting in an Increase in the Food Stamp Benefit. The Department must also act on changes that have been reported that would increase the household's Food Stamp amount as described in Section 617 of these rules. (4-11-06)

03. Documentation. Changes must be documented in the case record, even if there is no change in the Food Stamp amount. (6-1-94)

04. Change Report Form. A new Change Report Form (HW 0594 or HW 0586) must be given or sent to the household when a change is reported. (6-1-94)

05. Receipt of Report Notice. The Department must notify the household when the report is received. A Notice of Decision meets this requirement, when notifying the household of a benefit determination. (6-1-94)

06. Proof. Give the household a written request for proof. The household must be told failure to provide the proof will result in decreased or stopped benefits. The Department must document how the request for proof was made. (3-15-02)

07. Unclear Information. If the Department is unable to readily determine the effect of a change on the household's benefit amount, the Department will issue a written request advising the household of proof it must provide or actions it must take, to clarify its circumstances. The household has ten (10) days in which to respond to the Department's request, either by telephone or correspondence. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

633. NOTICE OF CHANGES NOT REQUIRED.

Notice to individual Food Stamp households is not required when the conditions listed in

Subsection 633.01 below are met. Mass notice must be given in some situations, as listed in Subsection 633.02 below: (4-5-00)

01. Waiver by the Household. A household member or authorized representative provides a written statement requesting closure. The person gives information causing reduction or an end to benefits and states, in writing, they know adverse action will be taken. The person acknowledges in writing continuation of benefits is waived, if a fair hearing is requested. (4-5-00)

02. Mass Change. Mass changes include: (6-1-94)

a. Changes in the income limit tables. (6-1-94)

b. Changes in the issuance tables. (6-1-94)

c. Changes in Social Security benefits. (6-1-94)

d. Changes in SSI payments. (6-1-94)

e. Changes in TAFI or AABD grants. (7-1-98)

f. Changes caused by a reduction, suspension, or cancellation of Food Stamps ordered by the Secretary of USDA. (6-1-94)

g. When it performs mass changes, the Department notifies Food Stamp households of the mass change by one of the following methods: (6-1-94)

i. Media notices. (6-1-94)

ii. Posters in the Food Stamp offices and issuance locations. (6-1-94)

iii. A general notice mailed to households. (6-1-94)

03. Mass Changes in TAFI or AABD. When a mass change to TAFI or AABD causes a Food Stamp change, use the following criteria: (7-1-98)

a. If the Department has thirty (30) days advance notice of the TAFI or AABD mass change, Food Stamps must be adjusted the same month as the change. (7-1-98)

b. If the Department does not have advance notice, Food Stamp benefits must be changed no later than the month after the TAFI or AABD mass change. (7-1-98)

c. Ten (10) day advance notice to Food Stamp households is not required. Adequate notice must be sent to Food Stamp households. (6-1-94)

d. If a household requests a fair hearing because of an issue other than mass change, continue Food Stamps. (6-1-94)

04. Notice of Death. Notice is not required when the Department learns of the death of

all household members. (6-1-94)

05. Move From Idaho or Cannot be Located. Notice of closure is not required when the household moves from Idaho, or when the U.S. Post Office returns mail to the Department because the household moved and left no forwarding address. (~~4-11-06~~)()

06. Completion of Restored Benefits. Notice is not required when an increased allotment, due to restored benefits, ends. The household must have been notified in writing when the increase would end. (6-1-94)

07. Joint Public Assistance and Food Stamp Applications. Notice is not required if the household jointly applies for TAFI or AABD and Food Stamps and gets Food Stamps pending TAFI or AABD approval. The household must be notified at certification that Food Stamps will be reduced upon TAFI or AABD approval. (7-1-98)

08. Converting From Repayment to Benefit Reduction. Notice is not required if a household with an IHE or IPV claim fails to repay under the repayment schedule. An allotment reduction is enforced. (6-1-94)

09. Households Receiving Expedited Service. Notice is not required if all the following conditions are met: (4-11-06)

- a. The applicant received expedited services. (4-11-06)
- b. Proof was postponed. (6-1-94)
- c. A regular certification period was assigned. (6-1-94)
- d. Written notice, stating future Food Stamps depend on postponed proof, was given at approval. (6-1-94)

10. Residents of a Drug or Alcoholic Treatment Center or a Group Living Arrangement Center. Notice is not required when the Department ends Food Stamps to residents of a drug or alcoholic treatment center or group living arrangement center if: (6-1-94)

- a. The Department revokes the center's certification. (6-1-94)
- b. FCS disqualifies the center as a retailer. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

735. FOOD STAMP HOUSEHOLDS THAT MOVE.

01. Household Moves and New Address is Known. When a Food Stamp household moves: ()

a. ~~Within Idaho, the sending and receiving field offices must transfer the case record and~~ the Department will change the household's address. ()

b. ~~When all members of a Food Stamp household move o~~ Outside of Idaho, the Department will close the case effective at the end of the month in which the household moves. Notice is not required. ~~(4-11-06)~~()

02. Household Moves and New Address is Unknown. When the U.S. Post Office returns mail to the Department because the household moved and left no forwarding address, the case is closed at the end of the month. Notice is not required. ()

a. If the household contacts the Department and provides a new Idaho address in the first calendar month following closure, the case is reopened without a new application as long as the certification period has not expired. The Food Stamps case is effective as of the first day of the month the Department is contacted. ()

b. New proof of residency is not required, unless questionable. ()

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

DOCKET NO. 16-0305-0904

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is **January 1, 2010**. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 56-202, Idaho Code, and 42 USC 1396d(p)(1)(C) and 42 USC 1396d(s).

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

The Department is amending the text of the proposed rules and the temporary rule based on federal guidance from the Centers for Medicare and Medicaid Services (CMS). CMS has provided this guidance to implement the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. The amendments to these rules align the Medicare Saving Program for Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary SLMB, and the Qualifying Individual (QI) for Medicare Part B with the Full-Benefit Low-Income Subsidy (LIS) Program resource limits and updates references to the Social Security Act.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions that have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [December 2, 2009, Idaho Administrative Bulletin, Vol. 09-12, pages 85 through 88.](#)

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

The fiscal impact for this rulemaking is based on the Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying

Individual (QI) for Medicare Part B Premiums. For SFY 2010, the anticipated state general funds impact is \$199,700 and federal matching funds of \$777,700. For SFY 2011, the anticipated state general funds impact is \$1,834,000 and federal matching funds of \$5,496,300. These amounts are reflected in the Medicaid Trustee and Benefit expenditure projections for the state fiscal years of 2010 and 2011.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Susie Cummins at (208) 732-1419.

DATED this 10th day of March, 2010.

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

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THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of these temporary rules is **January 1, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than December 16, 2009.

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 Department is amending these rules to comply with the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. These rules align the Medicare Savings Program for Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying Individual (QI) for Medicare Part B with the Full-Benefit Low-Income Subsidy (LIS) Program resource limits.

The Social Security Administration provides the Department a list of LIS applicants. These rules provide that the Medicare Savings Program application date is the day they apply for LIS.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to meet requirements in federal law.

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

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

The fiscal impact for this rulemaking is based on the Qualified Medicare Beneficiary (QMB), the Specified Low-Income Medicare Beneficiary (SLMB), and the Qualifying Individual (QI) for Medicare Part B Premiums. For SFY 2010, the anticipated state general funds impact is \$199,700 and federal matching funds of \$777,700. For SFY 2011, the anticipated state general funds impact is \$1,834,000 and federal matching funds of \$5,496,300. These amounts are reflected in the Medicaid Trustee and Benefit expenditure projections for the state fiscal years of 2010 and 2011.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these are being amended to align with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susie Cummins at (208) 732-1419.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before December 23, 2009.

DATED this 4th day of November, 2009.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0904

050. APPLICATION FOR ASSISTANCE.

01. Application Submitted by Participant. The participant must submit an application form to the Department. An adult participant, a legal guardian or a representative,

must sign the application form.

~~(7-1-99)~~()

02. Application Submitted Through Social Security Administration (SSA) Low-Income Subsidy Data Transmission. For low-income subsidy applicants identified on the SSA data transmission, the protected Medicare Savings Program application date is the day they applied for the low-income subsidy (LIS). ()

(BREAK IN CONTINUITY OF SECTIONS)

810. QUALIFIED MEDICARE BENEFICIARY (QMB).

A person meeting all requirements in Subsections 810.01 through 810.07 is eligible for QMB. QMB Medicaid pays Medicare premiums, coinsurance, and deductibles. (3-15-02)

01. Medicare Part A. The participant must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

02. Nonfinancial Requirements. The participant must meet the Medicaid residence, citizenship, support cooperation, and SSN requirements. (7-1-99)

03. Income. Monthly income must not exceed one hundred percent (100%) of the ~~official poverty line defined by the Federal Office of Management and Budget (OMB)~~ **Federal Poverty Guidelines (FPG)**. The single person income limit is the poverty line for a family of one (1) person. The couple income limit is the poverty line for a family of two (2) persons. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual ~~Federal poverty line~~ **FPG** revision is published. AABD cash is not counted as income. The income exclusions and disregards used for AABD are used for QMB. ~~(3-20-04)~~()

04. Dependent Income. Income of the dependent child, parent, or sibling is not counted. (7-1-99)

05. QMB Dependent Family Member Disregard. A dependent family member is a minor child, adult child meeting SSA disability criteria, parent or sibling of the participant or spouse living with the participant. The family member is or could be claimed on the Federal tax return of the participant or spouse. A participant with a dependent family member has an income disregard based on family size. The spouse is included in family size, whether or not the spouse is also participant. The disregard is based on the official poverty line income as defined by the OMB. The disregard is the difference between the poverty line for one (1) person, or two (2) persons if the participant has a spouse, and the poverty line for the family size including the participant, spouse, and dependent. (7-1-99)

06. Resource Limit. The resource limit ~~for a single participant is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000).~~ is equal to the amount defined under 42 U.S.C. 1396d(p)(1)(C). The resource exclusions used for AABD are used for QMB. ~~(3-20-04)~~()

07. Effective Dates. The effective date of QMB coverage is no earlier than the first day of the month after the approval month. A QMB participant is not entitled to backdated Medicaid. (7-1-99)

811. SPECIFIED LOW INCOME MEDICARE BENEFICIARY (SLMB).

A person meeting all requirements in Subsections 811.01 through 811.076 is eligible for SLMB. Medicaid pays the Medicare Part B premiums for a SLMB. The income and resource exclusions and disregards used for AABD are used for SLMB. (3-20-04)()

01. Other Medicaid. The SLMB may be eligible for other Medicaid. ~~The SLMB-H cannot be eligible for any other type of Medicaid.~~ (3-20-04)()

02. Medicare Part A. The SLMB must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

03. Nonfinancial Requirements. The SLMB must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. (7-1-99)

04. Income. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual ~~Federal poverty line~~ **FPG** revision is published. ~~The monthly income limit depends on the SLMB group.~~ The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit ~~for SLMB Group I~~ is up to one hundred twenty percent (120%) of the ~~Federal poverty line~~ **FPG**. ~~Monthly income for SLMB Group II is at least one hundred and twenty percent (120%) and not more than one hundred thirty five percent (135%) of the Federal poverty line.~~ (3-20-04)()

05. Resource Limit. The resource limit ~~for a single person is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000).~~ is equal to the amount defined under 42 USC 1396d(p)(1)(C). The resource exclusions used for AABD are used for SLMB. (7-1-99)()

~~**06. Coverage Limits.** Medicaid pays the Medicare Part B premium for SLMB Group I. There is no annual limit on participants served. Medicaid pays the Medicare Part B premium for SLMB Group II. There is an annual limit on participants served, based on availability of Federal funds. New applications are denied when the annual limit is reached.~~ (3-20-04)

076. Effective Dates. SLMB coverage begins on the first day of the application month. SLMB coverage may be backdated up to three (3) calendar months before the application month. (7-1-99)

~~**08. Status of SLMB Group II.** SLMB Group II is extended to at least January 21, 2003, pending action by the U. S. Congress.~~ (3-20-04)

812. Qualified Individual (QI).

A person meeting all requirements in Subsections 812.01 through 812.07 is eligible for QI. Medicaid pays the Medicare Part B premiums for a QI. The income and resource exclusions and disregards used for AABD are used for QI. ()

- 01. Other Medicaid.** The QI cannot be eligible for any other type of Medicaid. ()
- 02. Medicare Part A.** The QI must be entitled to hospital insurance under Part A of Medicare at the time of his application. ()
- 03. Nonfinancial Requirements.** The QI must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. ()
- 04. Income.** The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual FPG revision is published. The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit is up to one hundred thirty-five percent (135%) of the FPG. ()
- 05. Resource Limit.** The resource limit is equal to the amount defined under 42 USC 1396d(p)(1)(C). The resource exclusions used for AABD are used for SLMB. ()
- 06. Coverage Limits.** There is an annual limit on participants served, based on availability of federal funds. New applications are denied when the annual limit is reached. ()
- 07. Effective Dates.** QI coverage begins on the first day of the application month. QI coverage may be backdated up to three (3) calendar months before the application month. ()

8123. QUALIFIED DISABLED AND WORKING INDIVIDUAL (QDWI).

A person meeting all requirements in Subsections 812.01 through 812.05 of these rules is eligible for QDWI. The person must not be eligible for any other type of Medicaid. A QDWI is eligible only for Medicaid payment of his Medicare Part A premium. (3-15-02)

- 01. Age and Disability.** The participant must be a disabled worker under age sixty-five (65). (7-1-99)
- 02. Nonfinancial Requirements.** The participant must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation and SSN. (7-1-99)
- 03. Section 1818A Medicare.** SSA determined the participant meets the conditions of Section 1818A of the Social Security Act. (7-1-99)
- 04. Income.** Monthly income must not exceed two hundred percent (200%) of the one (1) person official poverty line defined by the OMB. (7-1-99)
- 05. Resources Limit.** The resource limit is ~~four thousand dollars (\$4,000)~~ equal to the amount defined under 42 USC 1396d(s). The resource exclusions used for AABD are used for QDWI. (7-1-99)()

8134. SPONSORED LEGAL NON-CITIZEN.

All income and resources of a legal non-citizen's sponsor are deemed for Medicaid eligibility if the sponsor has signed an I-864 affidavit of support. (7-1-99)

8145. CHILD SUBJECT TO DEEMING.

Income and resources of a child's stepparent are not deemed to the child in determining his Medicaid eligibility. (7-1-99)

8156. FUGITIVE FELON OR PROBATION OR PAROLE VIOLATOR.

A person denied SSI or AABD cash because of the prohibition against payment to fugitive felons and probation and parole violators is not disqualified from Medicaid. (7-1-99)

8167. -- 830. (RESERVED).

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

DOCKET NO. 16-0305-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is **July 1, 2010**. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

Changes are being made to the proposed rule and amending the temporary rule to clarify and add definitions for “needy” and “Title XVI” of the Social Security Act. Other changes have been made to clarify that a participant living in a Residential Care or Assisted Living Facility (RALF) or a Certified Family Home (CFH) is not eligible for AABD cash payments.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [June 2, 2010, Idaho Administrative Bulletin, Vol. 10-6, pages 39 through 44.](#)

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

Total cost savings to the state general fund for SFY 2011 for changes made to the AABD cash payment program is anticipated to be \$1,370,608 over a 12-month period.

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

DATED this 27th day of September, 2010.

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

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 16, 2010.

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

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

The 2010 Legislature passed House Bill 723, setting the Department's appropriations for State Fiscal Year 2011. The Department needs to reduce general fund expenditures and plans to do so by making the following rule changes:

- 1. Cap the amount of AABD cash payments for all living arrangements, which include: Room and Board, Semi-Independent Group Residential Facility (SIGRF), Assisted Living or Residential Care Facility (RALF), Certified Family Home (CFH), and Essential Persons who provide services in the participant's own home;**
- 2. Change rules to limit AABD cash only to participants who receive SSI payments; and**

3. **Align benefits for the DD Waiver participants with the A&D Waiver participants living in CFHs and RALFs.**

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

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

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

Total cost savings to the state general fund for SFY 2011 for changes made to AABD cash payment program is anticipated to be \$1,101,900 over a 12-month period.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to meet the appropriations set for SFY 2011 by the 2010 Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susie Cummins at (208) 732-1419.

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 June 23, 2010.

DATED this 4th day of May, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1001

005. DEFINITIONS.

These definitions apply to IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)": (7-1-99)

01. AABD Cash. An EBT payment to a participant, a participant's guardian, or a holder of a limited power of attorney for EBT payments. (5-3-03)

02. Applicant. A person applying for public assistance from the Department, and whose application is not fully processed. (7-1-99)

03. Annuity. A right to receive periodic payments, either for life, a term of years, or

other interval of time, whether or not the initial payment or investment has been annuitized. It includes contracts for single payments where the single payment represents an initial payment or investment together with increases or deductions for interest or fees rather than an actuarially-based payment from an insurance pool. (3-30-07)

04. Asset. Includes all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to, but does not receive because of action by: (3-30-07)

a. The individual or such individual's spouse; (3-30-07)

b. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or (3-30-07)

c. A person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse. (3-30-07)

05. Asset Transfer for Sole Benefit. An asset transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of transfer or at any time in the future. (5-3-03)

06. Child. A child is under age eighteen (18), or under twenty-one (21) and attending school, college, university, or vocational or technical training designed to prepare him for gainful employment. A child is not married. A child is not the head of a household. (7-1-99)

07. Department. The Department of Health and Welfare. (7-1-99)

08. Direct Deposit. The electronic deposit of a participant's AABD cash to the participant's personal account with a financial institution. (7-1-99)

09. Electronic Benefits Transfer (EBT). A method of issuing AABD cash to a participant, a participant's guardian or a holder of a limited power of attorney for EBT payments for a participant. EBT rules are in IDAPA 16.03.20, "Rules Governing Electronic Payments of Public Assistance, Food Stamps and Child Support." (7-1-99)

10. Essential Person. A person of the participant's choice whose presence in the household is essential to the participant's well-being. The essential person provides the services a participant needs to live at home. (5-3-03)

11. Fair Market Value. The fair market value of an asset is the price for which the asset can be reasonably expected to sell on the open market, in the geographic area involved. (5-3-03)

12. Long-Term Care. Long-term care services are services provided to an institutionalized individual as defined in 42 U.S.C. 1396p(c)(1)(C). (3-30-07)

13. Medicaid. The Federally-funded program for medical care (Title XIX, Social Security Act). (5-3-03)

14. Medical Assistance Rules. Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” and IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-30-07)

15. Medicaid for Families With Children Rules. Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.” (7-1-99)

16. Needy. *A person is considered needy for AABD cash payments if the person meets the nonfinancial requirements of Title XVI of the Social Security Act and the criteria in Section 514 of these rules.* ()

167. Participant. An individual applying for or receiving assistance. (7-1-99)

178. Partnership Policy. A partnership policy is a qualified long-term care insurance policy as defined in Section 7702B(b) of the Internal Revenue Code of 1986, which meets the requirements of the long-term care insurance model regulation and long-term care insurance model act promulgated by the National Association of Insurance Commissioners (NAIC), as incorporated in 42 USC 1396p(b)(5)(A). (4-2-08)

189. Pension Funds. Pension funds are retirement funds held in individual retirement accounts (IRAs), as described by the Internal Revenue Code, or in work-related pension plans, including plans for self-employed individuals sometimes referred to as Keogh plans. (4-2-08)

1920. Sole Beneficiary. The only beneficiary of a trust, including a beneficiary during the grantor’s life, a beneficiary with a future interest, and a beneficiary by the grantor’s will. (7-1-99)

201. TAFI Rules. Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, “Rules Governing Temporary Assistance for Families in Idaho.” (7-1-99)

22. Title XVI. *Title XVI of the Social Security Act, known as “Grants to States for Aid to the Aged, Blind, or Disabled,” is a program for financial assistance to needy individuals who are sixty-five (65) years of age or over, are blind, or are eighteen (18) years of age or over and permanently and totally disabled.* ()

213. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-30-07)

224. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-30-07)

~~235.~~ **Treasury Rate.** The five (5) year security note rate listed in the “Daily Treasury Yield Curve Rate” by the U.S. Treasury on January 1 of each year. The January 1 rate is used for the entire calendar year. (4-2-08)

~~246.~~ **Working Day.** A calendar day when regular office hours are observed by the state of Idaho. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

106. ~~QUALIFIED NON-CITIZEN ELIGIBILITY REQUIREMENTS FOR AABD CASH (RESERVED).~~

~~01. Eligibility Requirements for AABD Cash Beginning March 1, 2009. Beginning with applications dated March 1, 2009, to be eligible for AABD cash assistance, a qualified non-citizen must meet the requirements in Section 105 of these rules and must meet the eligibility requirements for Supplemental Security Income (SSI) payments. (3-29-10)~~

~~02. Receiving AABD Cash Prior to March 1, 2009. A qualified non-citizen who was eligible for and received an AABD cash payment for February 2009, but does not meet the SSI eligibility requirements, will continue to receive an un-capped cash benefit as long as all other eligibility requirements are met until one (1) of the following occurs: (3-29-10)~~

~~a. A break in the qualified non-citizen's AABD cash payment occurs because he failed to complete a redetermination for benefits; or (3-29-10)~~

~~b. The qualified non-citizen has not become a naturalized citizen and two (2) years have passed from March 1, 2009, and he does not meet the eligibility requirements for SSI payments. (3-29-10)~~

(BREAK IN CONTINUITY OF SECTIONS)

255. RETROACTIVE SSI AND ~~AABD~~ RSDI BENEFITS.

Retroactive SSI and ~~AABD~~ RSDI benefits are issued after the calendar month for which they are paid. Retroactive ~~AABD~~, SSI and RSDI benefits are excluded from resources for nine (9) calendar months after the month they are received. Interest earned by excluded funds is counted as income. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

500. FINANCIAL NEED ~~AND AABD CASH AMOUNT.~~

~~01. **Meet Eligibility for Financial Need.** To be eligible for AABD cash and Medicaid, the participant must have financial need. The participant has financial need if his allowances, as described in Sections 501 through 513 of these rules, are more than his income. *The amount of financial need is the amount that the allowances exceed income.* (3-29-10)()~~

~~02. **Maximum Monthly AABD Cash Payment.** If the participant is eligible, his AABD cash payment is the difference between his financial need and his countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. The maximum monthly AABD cash payment, for a participant described in Subsections 501.01 and 501.02 of these rules, is fifty three (\$53) dollars. AABD cash is paid electronically as set forth in IDAPA 16.03.20, "Rules Governing Electronic Payments (EP) of Public Assistance, Food Stamps, and Child Support." (3-29-10)~~

501. BASIC ALLOWANCE.

Each participant receives a basic allowance unless he lives in a nursing facility. The basic allowance for each living arrangement is listed in Subsections 501.01 through 501.04³ of ~~these~~ this rules. The Semi-Independent Group Residential Facility, Room and Board, Residential and Assisted Living Facility and Certified Family Home basic allowances are those in effect January 1, 2001. They do not change with the annual cost-of-living increase in the federal SSI benefit amount. (3-30-07)()

01. Single Participant. Through December 31, 2000, a participant is budgeted five hundred forty-five dollars (\$545) monthly as a basic allowance when living in a situation described in Subsections 501.01.a. through 501.01.e. of these rules. Beginning January 1, 2001, the basic allowance increase for a single participant is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. (3-30-07)

- a. Living alone. (7-1-99)
- b. Living with his ineligible spouse. (7-1-99)
- c. Living with another participant who is not his spouse. (7-1-99)
- d. Living in another's household. This includes a living arrangement where the participant purchases lodging (room) and meals (board) from his parent, child or sibling. (3-30-01)
- e. Living with his TAFI child. (7-1-99)

02. Couple or Participant Living with Essential Person. Through December 31, 2000, a participant living with his participant spouse or his essential person is budgeted seven hundred sixty-eight dollars (\$768) monthly as a basic allowance. Beginning January 1, 2001, the basic allowance increase for a couple is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a couple. The increase may be rounded up. (3-30-01)

03. SIGRIF. A participant living in a semi-independent group residential facility (SIGRIF) is budgeted three hundred forty-nine dollars (\$349) monthly as a basic allowance.

(7-1-99)

~~**04. Personal Care Supplement.** A participant living in a Residential and Assisted Living Facility, or Certified Family Home with state plan personal care services, is budgeted five hundred and twenty dollars (\$520) monthly as a Basic Allowance, if he does not have enough income to pay his provider for his rent, utilities and food. To receive a Personal Care Supplement, the participant's income after exclusions and disregards must be less than his Basic Allowance. The amount of the supplement is the remainder when income, less exclusions and disregards, is subtracted for the basic allowance. Beginning January 1, 2003, the basic allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.~~ (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

513. RESIDENTIAL CARE OR ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.

A participant living in a Residential Care or Assisted Living Facility (RALF), in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," or a Certified Family Home (CFH), in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," is budgeted a basic allowance of seventy-seven dollars (\$77) monthly. Beginning January 1, 2007, this basic allowance will be adjusted annually by twenty percent (20%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded down to the nearest dollar. (3-30-07)

01. Budgeted Monthly Allowance Based On Level of Care. A participant is budgeted a monthly allowance for care based on ~~his assessed~~ the level of care received as described in Section 514~~5~~ of these rules. ~~If the participant receives a lower State Plan Personal Care Service (PCS) level of care than his assessed level, his allowance is for the lower level of care. These allowances are used to determine income limits for Medicaid if the participant does not qualify for the Home and Community Based Services Waivers. These allowances are only used for AABD cash when the participant is entitled to the DD Waiver in accordance with Section 789 of these rules.~~ If the participant does not require ~~one (1) of the~~ State Plan Personal Care Services (PCS) levels of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. (3-30-07)()

02. Care Levels and Monthly Allowances. Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513.02 of these rules. Beginning January 1, 2007, the RALF and CFH allowances for participants living in a RALF or CFH on State Plan PCS will be adjusted annually by eighty percent (80%) of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. This increase will be rounded up to the next dollar.

TABLE 513.02 - STATE PLAN PCS CARE LEVELS AND ALLOWANCES AS OF 1-1-06		
	Level of Care	Monthly Allowance
a.	Level I	Eight hundred and thirty-five dollars (\$835)
b.	Level II	Nine hundred and two dollars (\$902)
c.	Level III	Nine hundred and sixty-nine dollars (\$969)

(3-30-07)

03. CFH Operated by Relative. A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH State Plan PCS allowances. He may receive the allowance for a person living with a relative as described in Section 501 of these rules. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption.

(3-30-07)

514. AABD CASH PAYMENTS.

Only a participant who receives an SSI payment for the month is eligible for an AABD cash payment in the same month. The AABD cash payment amount is based on the participant's living arrangement described in Subsections 514.01 through 514.04 of this rule. An AABD cash payment is the difference between a participant's financial need and his countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. AABD cash is paid electronically as provided in IDAPA 16.03.20, "Electronic Payments of Public Assistance, Food Stamps, and Child Support."

()

01. Single Participant Maximum Payment. For a single participant described in Section 501.01 of these rules, the maximum monthly AABD cash payment amount is fifty-three dollars (\$53).

()

02. Couple or Participant Living with Essential Person Maximum Amount. For participants described in Subsection 501.02 of these rules, the maximum monthly AABD cash payment amounts are:

()

a. A couple receives twenty dollars (\$20); or

()

b. A participant living with essential person receives eighteen dollars (\$18).

()

03. Semi-Independent Group Maximum Payment. For a participant described in Subsection 501.03 and Section 511 of these rules, the maximum monthly AABD cash payment amount is one hundred sixty-nine dollars (\$169).

()

04. Room and Board Maximum Payment. For a participant described in Section 512 of these rules, the maximum monthly AABD cash payment is one hundred ninety-eight dollars (\$198).

()

05. RALF and CFH. A participant residing in a RALF or CFH is not eligible for an AABD cash payment. ()

5145. RESIDENTIAL AND ASSISTED LIVING FACILITY CARE AND CERTIFIED FAMILY HOME ASSESSMENT AND LEVEL OF CARE.

The participant's need for care, level of care, plan of care, and the licensed facility's ability to provide care is assessed by the Regional Medicaid Services (RMS) when a participant is admitted. The RMS must approve the placement before Medicaid can be approved ~~or a Personal Care Supplement can be paid.~~ (5-3-03)()

5156. CHANGE IN LEVEL OF CARE.

A change in the participant's level of care affects eligibility as described in Subsections 5156.01 and 5156.02 ~~of this rule.~~ (5-3-03)()

01. Increase in Level of Care. An increase in level of care is effective the month the RMS reassesses the level of care. (5-3-03)

02. Decrease in Level of Care. When the RMS verifies the participant has a decrease in his level of care, and his income exceeds his new level of care, his Medicaid must be stopped after timely notice. When the RMS determines the participant no longer meets any level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. ~~He can receive AABD cash.~~ (5-3-03)()

5167. -- 520. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~**522. MOVE TO A RESIDENTIAL CARE AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME FROM NURSING HOME OR HOSPITAL.**~~

~~A participant may move to a Residential Care and Assisted Living Facility or Certified Family Home from a nursing home or hospital. The participant may be eligible for a Personal Care Supplement for the month of the move. Determine eligibility for, and the amount of the supplement, using Table 522.~~

TABLE 522—PERSONAL CARE SUPPLEMENT		
Step	Step	Procedure
01.	Step 1	Determine the participant's countable income, for the month of the move, by subtracting applicable income exclusions and disregards.
02.	Step 2	Subtract income used to meet patient liability in the nursing home for the month of the move.
03.	Step 3	Subtract the nursing home personal needs allowance from the income remaining after Step 1. Use this income to determine the amount of the Personal Care Supplement in Subsection 501.05 of these rules.

(5-3-03)

522. -- 523. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

603. ~~RETROACTIVE AABD CASH~~ (RESERVED).

~~Retroactive AABD cash is paid when a participant is underpaid due to Department error.
Retroactive AABD cash is paid when a participant gets a favorable fair hearing decision.
Retroactive AABD cash is paid when an AABD applicant's SSI payments are delayed because of
SSA delays.~~ (7-1-99)

604. ~~RETROACTIVE AABD CASH AND~~ PARTICIPANT DETERMINED SSI
ELIGIBLE AFTER APPEAL.

If the SSA finds a participant is blind or disabled, based on an appeal of an SSA decision, the participant meets the disability requirements for AABD cash and related Medicaid on the effective date determined by SSA. AABD cash payments are effective no earlier than the month SSA issues the favorable decision for SSI payments. (7-1-99)()

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

DOCKET NO. 16-0305-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code, Public Law 111-118 Section 8120, and Public Law 111-3, Section 211.

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

These rule changes were made due to federal regulations and the removal of the ISSH Waiver from the Medicaid State Plan. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-09, pages 168 through 175.](#)

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

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

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

DATED this 5th day of November, 2010.

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

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rules are: **December 19, 2009, January 1, 2010, and September 1, 2010.**

Editor's Note: The January 1, 2010, temporary effective date reflects the date on which the deletion of Section 790 became effective. This Section is being deleted from the rule in this rulemaking. Because this Section 790 is being deleted, there is no actual effective date shown in this docket. This date indicates when the formerly required waiver was no longer considered an eligibility requirement and when enforcement of the requirement was terminated.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code; also eligibility for special immigrants per Public Law 111-118, Section 8120; and Public Law 111-3, Section 211, regarding verification of citizenship or nationality for purposes of determining eligibility for Medicaid or the Children's Health Insurance Program (CHIP).

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 15, 2010.

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

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

Due to changes in federal regulations and the expiration of the ISSH Waiver from the Medicaid State Plan, these AABD rules are amended to:

- 1. Allow for the use of electronic data transfer from the Social Security Administration (SSA) to verify U.S. citizenship and identity as provided in Public Law 111-3, Section 211;**
- 2. Change the eligibility time period for Afghani and Iraqi special immigrants to comply with changes in Public Law 111-118, Section 8120; and**
- 3. Remove references to the Idaho State School and Hospital (ISSH) Waiver as it is no longer available as of January 1, 2010.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code:

The Governor has found that temporary adoption of the rule changes is appropriate because they confer benefits.

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

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

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

1. Cost impacts for electronic data transfer with SSA for this chapter is minimal to state general funds or AABD.
2. There are no Special Immigrants currently eligible for AABD, therefore the anticipated fiscal impact for 2011 is \$0.
3. There are no ISSH waiver participants, therefore the anticipated fiscal impact is \$0.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are being done to confer benefits and align with federal regulations.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 13th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-1002

104. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

To be eligible for AABD cash and Medicaid, an individual must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Subsection 104.09 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. (3-29-10)

01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity. The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a. A U.S. passport; (3-30-07)
- b. A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
- c. A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)
- d. A document issued by a federally-recognized Indian tribe evidencing membership, enrollment in, or affiliation with such tribe. (3-29-10)

02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 104.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
 - i. United States fifty (50) states; (3-30-07)
 - ii. District of Columbia; (3-30-07)
 - iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
 - iv. Guam, on or after April 10, 1899; (3-30-07)
 - v. U.S. Virgin Islands, on or after January 17, 1917; (3-30-07)
 - vi. America Samoa; (3-30-07)
 - vii. Swain's Island; or (3-30-07)
 - viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
- b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
- c. A report of birth abroad of a U.S. Citizen, Form FS-240; (3-30-07)
- d. A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
- e. A Northern Mariana Identification Card, Form I-873; (3-30-07)
- f. An American Indian Card issued by the Department of Homeland Security with

the classification code “KIC,” Form I-873; (3-30-07)

- g.** A final adoption decree showing the child’s name and U.S. place of birth; (3-30-07)
- h.** Evidence of U.S. Civil Service employment before June 1, 1976; (4-2-08)
- i.** An official U.S. Military record showing a U.S. place of birth; (4-2-08)
- j.** A certification of birth abroad, FS-545; (4-2-08)
- k.** A verification with the Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE) database; or (4-2-08)
- l.** Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (4-2-08)

03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a.** A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; (4-2-08)
- b.** A life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth; (4-2-08)
- c.** A religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual’s age at the time the record was made. The record must be an official record recorded with the religious organization; or (4-2-08)
- d.** An early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the names and places of the birth of the child’s parents. (4-2-08)

04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 104.01 through 104.03 of this rule do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a.** Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth; (3-30-07)

b. One (1) of the following documents that shows a U.S. place of birth and for a participant who is sixteen (16) years of age or older was created at least five (5) years before the application for Medicaid. For a child under sixteen (16) years of age, the document must have been created near the time of birth; (4-2-08)

- i. Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
- ii. U.S. State vital Statistics official notification of birth registration; (3-30-07)
- iii. A delayed U.S. public birth record that was recorded more than five (5) years after the person's birth; (4-2-08)
- iv. Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
- v. Medical (clinic, doctor, or hospital) record; (3-30-07)
- vi. Institutional admission papers from a nursing facility, skilled care facility or other institution; (4-2-08)
- vii. Bureau of Indian Affairs (BIA) roll of Alaska Natives; or (4-2-08)

c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: (4-2-08)

- i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)
- ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)
- iii. The persons making the declaration must provide proof of their own U.S. citizenship and identity; and (3-30-07)
- iv. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

05. Documents Accepted for Proof of Identity but Not Citizenship. The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 104.02 through 104.04 of this rule to establish both citizenship and identity. (3-29-10)

a. A state-issued driver's license bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color; (3-30-07)

- b.** A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 104.05.a. of this rule; (3-29-10)
- c.** School identification card with a photograph of the individual; (3-30-07)
- d.** U.S. Military card or draft record; (3-30-07)
- e.** Military dependent's identification card; (3-30-07)
- f.** U. S. Coast guard Merchant Mariner card; (3-30-07)
- g.** A cross-match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system; or (4-2-08)
- h.** A declaration signed under the penalty of perjury by the facility director or administrator of a residential care facility where a disabled participant resides may be accepted as proof of identity when the individual does not have or cannot get any document in Subsections 104.05.a. through 104.05.i. of this rule. (3-29-10)

06. Additional Documents Accepted for Proof of Identity. If the participant provides citizenship documentation as described in Subsections 104.02 or 104.03 of this rule, three (3) or more corroborating documents may be used to prove identity. (3-29-10)

07. Identity Rules for Children. The following documentation of identity for children under sixteen (16) may be used: (3-30-07)

- a.** School records may be used to establish identity. Such records also include nursery or daycare records. (3-30-07)
- b.** Clinic, doctor, or hospital records. (4-2-08)
- c.** A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct," if documents listed in Subsection 104.02 of this rule are not available. A declaration may be used if it meets the following conditions: (3-29-10)
 - i.** It states the date and place of the child's birth; and (3-30-07)
 - ii.** It is signed by a parent or guardian. (3-30-07)
- d.** A declaration can be used for a child up to the age of eighteen (18) when documents listed in Subsection 104.05.a. through 104.05.c. of this rule are not available. (3-29-10)
- e.** A declaration cannot be used for identity if a declaration for citizenship documentation was provided for the child. (3-30-07)

08. Eligibility for ~~Applicants and~~ Medicaid Participants Who Do Not Provide Citizenship and Identity Documentation. (3-30-07)

~~a. Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation;~~ (3-30-07)

~~b. Any Medicaid participants, who does not have ninety (90) days to provide proof of U.S. citizenship and identity documentation, at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant:~~ Medicaid benefits will be approved pending verification if the participant meets all other eligibility requirements. Medicaid will be denied if the participant refuses to obtain documentation. (3-30-07)()

~~i. Does not meet other eligibility criteria required in this chapter of rules; or~~ (3-30-07)

~~ii. Refuses to obtain the documentation.~~ (3-30-07)

09. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements. The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 104.01 through 104.08 of this rule is provided: (3-29-10)

a. Supplemental Security Income (SSI) recipients; (4-2-08)

b. Individuals determined by the SSA to be entitled to or are receiving Medicare; (4-2-08)

c. Social Security Disability Income (SSDI) recipients; ~~and~~ (4-2-08)()

d. Adoptive or foster care children receiving assistance under Title IV-B or Title IV-E of the Social Security Act; (4-2-08)()

e. Individuals deemed eligible for Medicaid as a newborn under Section 800 of these rules; ~~and~~ (3-29-10)()

f. Individuals whose name and social security number are validated by the Social Security Administration data match as meeting U.S. citizenship status. ()

10. Assistance in Obtaining Documentation. The Department will assist individuals who are mentally or physically incapacitated and who lack a representative to assist them in obtaining such documentation. (3-30-07)

11. Provide Documentation of Citizenship and Identity One Time. When an individual has provided citizenship and identity documents, changes in eligibility will not require an individual to provide such documentation again unless later verification of the documents provided raises a question of the individual's citizenship or identity. (3-30-07)

105. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible for AABD cash and Medicaid, an individual must be a member of one (1) of the groups listed in Subsections 105.01 through 105.17 of this rule. An individual must also provide proof of identity as provided in Section 104 of these rules. (3-29-10)

01. U.S. Citizen. A U.S. Citizen. (3-30-07)

02. U.S. National, National of American Samoa or Swain's Island. A U. S. National, National of American Samoa or Swain's Island. (3-30-07)

03. Child Born Outside the U.S. A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)

a. At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)

b. The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)

c. The child is under eighteen (18) years of age; (3-30-07)

d. The child is a lawful permanent resident; and (3-30-07)

e. If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)

04. Full-Time Active Duty U.S. Armed Forces Member. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-30-07)

05. Veteran of the U.S. Armed Forces. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. (3-30-07)

06. Non-Citizen Entering the U.S. Before August 22, 1996. A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-30-07)

07. Non-Citizen Entering on or After August 22, 1996. A non-citizen who entered on or after August 22, 1996, and; (3-30-07)

a. Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)

b. Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)

c. Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

d. Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; ~~or~~ (3-20-04)()

e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; ~~(3-30-07)~~()

f. Is an Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007; or ()

g. Is an Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008. ()

08. Qualified Non-Citizen Entering on or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years. (3-30-07)

09. American Indian Born in Canada. An American Indian born in Canada under 8 U.S.C. 1359. (3-30-07)

10. American Indian Born Outside the U.S. An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). (3-30-07)

11. Qualified Non-Citizen Child Receiving Federal Foster Care. A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance. (3-30-07)

12. Victim of Severe Form of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

a. Is under the age of eighteen (18) years; or (3-20-04)

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of

traffickers in persons. (3-30-07)

13. Qualified Non-Citizen Receiving Supplement Security Income (SSI). A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

14. Permanent Resident Receiving AABD Cash On August 22, 1996. A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

~~**15. Afghan Special Immigrants.** An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, are eligible for eight (8) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (3-29-10)~~

~~**16. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)~~

175. Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements. Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 105.01 through 105.164 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

(Editor's Note: The effective date of this deletion is January 1, 2010. This is the date when the waiver was no longer a required part of the eligibility determination process.)

~~**790. IDAHO STATE SCHOOL AND HOSPITAL (ISSH) WAIVER.** To be eligible, the participant must be at least fifteen (15) years of age but less than nineteen (19) years of age and is currently at or would be placed at the Idaho State School and Hospital (ISSH) if not for waiver services. (3-20-04)~~

~~**7910. -- 798. (RESERVED).**~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code, 45 CFR Parts 260-265, and Public Law 111-118.

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 were amended to better support Idaho's low-income individuals in need of temporary assistance. These rules were adopted as temporary rules that published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 16 through 21. The complete text of the proposed rules was published in the May 5, 2010, Idaho Administrative Bulletin, Vol. 10-5, pages 27 through 32. These pending rules are being adopted as proposed.

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:

The Career Enhancement (CE) program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for TAFI participants. The fiscal impact in federal funds is \$300,000 for CE benefits, and \$24,700 for special immigrants.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Genie Sue Weppner at (208) 334-5656.

DATED this 1st day of October, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
phone (208) 334-5564; fax: (208) 334-6558

P.O. Box 83720
Boise, ID 83720-0036
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code, 45 CFR Parts 260-265, and Public Law 111-118.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May, 19, 2010.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking. These rules were adopted as temporary rules with effective dates of December 19, 2009, and January 1, 2010. The temporary rule docket published in the [April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 16 through 21](#).

In order to better support and assist Idaho's low-income individuals in need of temporary assistance, the Department is amending these rules to align with federal regulations and other Department chapters on excluded resources and special immigrants. The U.S. Census that is conducted every ten years hires temporary employees to conduct this field work. The Department is excluding this temporary census income from countable income in order to treat income for TAFI the same as other benefit programs. Federal regulations updated the special immigrants length of eligibility and these rules are being amended to align with those updates.

The Department is removing barriers that have excluded participation under the Career Enhancement (CE) services to help participants obtain or maintain employment. These changes will align with Emergency Assistance services by: removing the requirement to have a job search assistance plan, removing the restriction from CE services for anyone who received emergency assistance payments in the past 12 months, and removing housing and utility costs from prohibited supportive service expenditures.

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

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

The Career Enhancement (CE) program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for TAFI

participants. The fiscal impact in federal funds is \$300,000 for CE benefits, and \$24,700 for special immigrants.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes provide a benefit and align Department rules with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 26, 2010.

DATED this 29th day of March, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-1001

131. CITIZENSHIP AND QUALIFIED NON-CITIZEN CRITERIA.

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 131.01 through 131.10 of this rule. (5-8-09)

01. U.S. Citizen. A U.S. Citizen; or (3-20-04)

02. U.S. National, National of American Samoa or Swains Island. A U. S. National, National of American Samoa or Swains Island; or (3-20-04)

03. Full-Time Active Duty U.S. Armed Forces Member. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (3-20-04)

04. Veteran of the U.S. Armed Forces. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (3-20-04)

05. Non-Citizen Entering the U.S. Before August 22, 1996. A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (3-20-04)

06. Non-Citizen Entering on or After August 22, 1996. A non-citizen who entered on or after August 22, 1996, and (3-20-04)

a. Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; or (3-20-04)

b. Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (3-20-04)

c. Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (3-20-04)

d. Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)

e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (3-20-04)

07. Qualified Non-Citizen Entering on or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (3-20-04)

08. Victim of Severe Form of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

a. Is under the age of eighteen (18) years; or (3-20-04)

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-20-04)

09. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law ~~110-161~~ 111-118, who has special immigration status after December 26, 2007, is eligible ~~for eight (8) months~~ from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(3-11-09)T()~~

10. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law ~~110-181~~ 111-118, who has special immigration status after January 28, 2008, is eligible ~~for eight (8) months~~ from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(5-8-09)()~~

(BREAK IN CONTINUITY OF SECTIONS)

215. EXCLUDED INCOME.

The types of income listed in Subsections 215.01 through 215.378 of this rule, are excluded.

~~(5-8-09)~~()

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

- 18. Child Nutrition.** Child nutrition benefits. (7-1-98)
- 19. Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
- 20. Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
- 21. Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
- 22. Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
- 23. Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
- 24. Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
- 25. Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
- 26. Educational Income.** Educational income, except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income. (7-1-98)
- 27. Work Study Income of Student.** College work study income. (7-1-98)
- 28. VA Educational Assistance.** VA Educational Assistance. (7-1-98)
- 29. Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
- 30. Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
- 31. Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
- 32. Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
- 33. Agent Orange.** Agent Orange settlement payments. (7-1-98)

34. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)
35. **Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)
36. **Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)
37. **Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)
38. **Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. ()

(BREAK IN CONTINUITY OF SECTIONS)

369. CAREER ENHANCEMENT SERVICE PLAN.

All individuals receiving Career Enhancement Assistance must have a written Career Enhancement Service Plan ~~or a Food Stamp Job Search Assistance Program Plan (JSAPP).~~ (5-3-03)()

370. CAREER ENHANCEMENT ASSISTANCE ELIGIBILITY CRITERIA.

The individual must meet the criteria in Subsections 370.01 through 370.14. (5-3-03)

01. Application and Service Plan. An application form must be completed for Career Enhancement Assistance, unless the family already receives services from the Food Stamp Medicaid, Idaho Child Care or Child Support Services programs. A Career Enhancement service plan must be completed for all eligible individuals. (5-3-03)

02. Verification of Career Enhancement Eligibility. SSN must be verified. Other eligibility criteria are verified at the discretion of the Department. (3-30-01)

03. Eligible Individual. The individual must not have failed, without good cause, to comply with a previous Career Enhancement Service Plan. The individual must be a parent or a caretaker relative with a dependant child in the home, a pregnant woman; or a non-custodial parent legally responsible to provide support for a dependent child who does not reside in the same home. (5-3-03)

04. Need for Work-Related Services. The individual must be in need of work-related

services to maintain employment or participate in work programs. The individual must participate in meeting the need to the extent possible. This requires the individual to meet a portion of the need if possible, and to explore other resources available to meet the need. (3-15-02)

05. Income Limit. The family must meet the income limit for only the first month of the service to receive Career Enhancement Assistance. The family's income must be below two hundred percent (200%) of the federal poverty guidelines, or the family must be eligible for Food Stamps, Medicaid or ICCP. For non-custodial parents, the family's income must be below four hundred percent (400%) of the federal poverty guidelines, or the family must be eligible for Food Stamps or Medicaid. (5-3-03)

06. Citizenship and Legal Non-Citizen. The individual must be a citizen or must meet the legal non-citizenship requirements of Section 131. (7-1-99)

07. SSN. An SSN, or proof of application for an SSN, must be provided for the individual. (3-30-01)

08. Residence. The individual must live in the state of Idaho and must not be a resident of another state. (7-1-99)

09. Duplication of Services. Career Enhancement Assistance must not be provided for a need already met by Emergency Assistance under IDAPA 16.06.01, "Rules Governing Family and Children's Services," or by a one-time TAFI cash payment. (5-3-03)

10. TANF Restrictions. The family must not be receiving TANF or TAFI benefits or be serving a TAFI sanction. Participants must not receive Career Enhancement Assistance if they have received five (5) years of TANF benefits. The family must not be receiving TANF Extended Cash Assistance. ~~If the participant received an Emergency Assistance to Needy Families with Children payment within the past twelve (12) months, the participant cannot receive Career Enhancement Assistance.~~ The participant cannot receive Career Enhancement Assistance if they have received it within the past twelve (12) months. (5-3-03)()

11. Controlled Substance Felons. Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use or distribution of a controlled substance can receive Career Enhancement Assistance when they comply with the terms of a withheld judgment, probation or parole. The felony must have occurred after August 22, 1996. (5-3-03)

12. Fleeing Felons. Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony cannot receive Career Enhancement Assistance. (5-3-03)

13. Probation or Parole Violation. Felons who are violating a condition of probation or parole imposed for a federal or state felony cannot receive Career Enhancement Assistance. (5-3-03)

14. Fraud. Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid, or SSI, from two (2) or

more states at the same time, cannot receive Career Enhancement Assistance for ten (10) years from the date of conviction. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

376. PROHIBITED SUPPORTIVE SERVICE EXPENDITURES.

Supportive Service expenditures must not be authorized for the following types of expenses: (5-3-03)

- 01. Child Care.** Child care of any type. (5-3-03)
- 02. Medical Services.** Medical services, including medical exams. (5-3-03)
- 03. Vehicles.** Motorized vehicle purchases, **and** down payments, ~~and payment arrearages.~~ (5-3-03)()
- ~~**04. Housing and Utility Costs.** Security deposits, payments on arrearages, current monthly payments, and future monthly payments. (5-3-03)~~
- 054. Services for Children.** Services or payments for a child, such as counseling, clothing, and school supplies. (5-3-03)
- ~~**065. Credit Card Accounts.** Payments on charge cards. (5-3-03)~~
- ~~**076. Household Items.** Furniture and major home appliances. (5-3-03)~~
- ~~**087. Fines.** Any type. (5-3-03)~~
- ~~**098. Professional Union or Trade Dues.** Any type. (5-3-03)~~
- ~~**109. Any Service.** Available through another resource. (5-3-03)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.24 - THE MEDICALLY INDIGENT PROGRAM - REQUEST FOR
MEDICAID ELIGIBILITY DETERMINATION
DOCKET NO. 16-0324-1001 (NEW CHAPTER)
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is **July 1, 2010**. This pending rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 31-3503C, Idaho Code.

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

Changes are being made to the proposed rule and the temporary rule is amended to clarify that when a participant is determined Medicaid eligible, the Department will only notify the participant of eligibility.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, pages 28 through 34](#).

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

This rulemaking has no fiscal impact to the state general fund.

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

DATED this 27th day of September, 2010.

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

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is **July 1, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 31-3503C, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

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

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

Under Title 31, Chapter 35, Idaho Code, the Department has the responsibility to develop and implement rules for a Medicaid eligibility determination process for applicants applying for financial assistance through the County Medically Indigent Program and Catastrophic Health Care Cost Program. This new chapter of rules provides the requirements necessary for a hospital or county to submit applications and requests to the Department to determine Medicaid eligibility for an applicant who may be medically indigent.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reasons: **To comply with governing law and provide a benefit to individuals who may be medically indigent or may be eligible for Medicaid.**

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

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

At this time, the Department is unable to determine the number of County Medically Indigent applicants who will meet the Medicaid eligibility criteria. The administrative operating costs for State Fiscal Year 2011 appropriated by the Legislature is \$137,600 of which 50% is state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is being made to comply with governing 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lori Wolff at (208) 334-6599.

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 July 28, 2010.

DATED this 27th day of May, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0324-1001

IDAPA 16, TITLE 03, CHAPTER 24

16.03.24 - THE MEDICALLY INDIGENT PROGRAM - REQUEST FOR MEDICAID ELIGIBILITY DETERMINATION

000. LEGAL AUTHORITY.

In accordance with Section 31-3503C, Idaho Code, the Idaho Legislature has authorized the Department of Health and Welfare to adopt and enforce rules governing requests for Medicaid eligibility determination for persons who may be medically indigent. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.03.24, “The Medically Indigent Program - Request for Medicaid Eligibility Determination.” ()

02. Scope. ()

a. The Idaho Legislature has declared that the County Medically Indigent Program and the Catastrophic Health Care Cost Program are payers of last resort. These programs are only a partial solution to the health care costs of Idaho's medically indigent citizens. Therefore, hospitals, providers, applicants, and third party applicants seeking financial assistance under the County Medically Indigent Program and the Catastrophic Health Care Cost Program are subject to the limitations and requirements in this chapter of rules. ()

b. In accordance with Section 31-3503E(7), Idaho Code, the denial of Medicaid eligibility is not a determination of medical indigency under the County Medically Indigent Program or the Catastrophic Health Care Cost Program. Title 31, Chapter 35, Idaho Code, provides that under the County Medically Indigent Program and the Catastrophic Health Care Cost Program eligibility for financial assistance will be determined by the respective counties and the Board. The respective counties and the Board may, limit or prioritize eligibility for financial assistance based upon such factors as availability of funding, degree of financial need, degree of clinical need, or other factors. ()

c. In accordance with Title 31, Chapter 35, Idaho Code, these rules provide for and establish policies, procedures, requirements, and appeal processes applicable to requests for Medicaid eligibility determination for persons who may be medically indigent. This chapter is not intended to, and does not establish an entitlement for or to receive financial assistance under Title 31, Chapter 35, Idaho Code. ()

d. Individuals who may be eligible for Medicaid must comply with requirements in Title XIX and Title XXI of the Social Security Act, and the following Department rules: ()

i. IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.” ()

ii. IDAPA 16.03.05, “Rules Governing Eligibility for the Aged, Blind and Disabled (AABD).” ()

iii. IDAPA 16.03.06, “Refugee Medical Assistance.” ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These statements are available for public inspection and copying at cost at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho, 83720-0036. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by the provisions of IDAPA 16.05.03, “Contested Case Proceedings and Declaratory Rulings.” ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter of rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. (208) 334-5500. ()

05. Internet Website. The Department's internet website is found at www.healthandwelfare.idaho.gov. ()

06. Medicaid Eligibility Business Unit. For requests and determinations under this chapter of rules, the Department may be contacted at the following: ()

a. Address: P.O. Box 83720, Boise, Idaho 83720-0003. ()

b. Telephone: (208) 528-3770. ()

c. Facsimile: (208) 528-3771. ()

d. E-mail address: "SRCU-CntyHospApp@dhw.idaho.gov." ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS.

01. Confidential Records. The use or disclosure of records or information covered by these rules must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

03. Authorization for Disclosure. An application for financial assistance and request for Medicaid eligibility determination constitutes authorization for hospitals, providers, the Board, the Department, and the respective counties of the State of Idaho to copy, transmit, share, and exchange information pertaining to an applicant's health and finances for the purpose of determining Medicaid eligibility or medical indigency. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of this chapter of rules, the following terms apply. ()

- 01. AABD.** Aid to the Aged, Blind, and Disabled. ()
- 02. Applicant for Financial Assistance.** A person who is or may be seeking financial assistance under Title 31, Chapter 35, Idaho Code whose application is not fully processed.()
- 03. Application.** An application for financial assistance under Section 31-3504, Idaho Code, and the uniform form used for the initial review and the Department's Medicaid eligibility determination pursuant to Section 31-3503E, Idaho Code. An application under Title 31, Chapter 35, Idaho Code, for financial assistance is not an application for Medicaid. ()
- 04. Board.** The Board of the Catastrophic Health Care Cost Program established in Section 31-3517, Idaho Code. ()
- 05. Clerk.** The clerk of the respective counties or his designee. ()
- 06. Counties.** The respective counties described in Title 31, Chapter 1, Idaho Code. ()
- 07. County Commissioners.** The Board of County Commissioners in their respective counties. ()
- 08. Department.** The Idaho Department of Health and Welfare. ()
- 09. Director.** The Director of the Idaho Department of Health and Welfare or his designee. ()
- 10. Eligibility Determination.** The policies, processes, criteria, and standards used by the Department to determine whether or not an individual is eligible for Medicaid. ()
- 11. HIPAA.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) under 42 USC Section 12204, and federal regulations at 45 CFR Parts 160, 162, and 164. ()
- 12. Hospital.** A facility licensed in accordance with Title 31, Chapter 13, Idaho Code. ()
- 13. Medicaid.** The federally funded program for medical care (Title XIX, Social Security Act) also known as Idaho's Medical Assistance Program. ()
- 14. Obligated Person.** The person or persons who are legally responsible for an applicant. ()

15. Third-Party Applicant. A person other than an obligated person who completes, signs, and files an application on behalf of a patient. ()

16. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the States. This program pays for medical assistance for certain individuals and families with low income and limited resources. ()

17. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP), is a federal and state partnership similar to Medicaid, that expands health insurance to targeted, low- income children. ()

011. -- 099. (RESERVED).

100. ELIGIBILITY CRITERIA.

Eligibility criteria and determinations for Medicaid must comply with Department rules as described in Subsections 100.01 through 100.03 of this rule. ()

01. IDAPA 16.03.01. "Eligibility for Health Care Assistance for Families and Children." ()

02. IDAPA 16.03.05. "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)." ()

03. IDAPA 16.03.06. "Refugee Medical Assistance." ()

101. -- 109. (RESERVED).

110. REQUESTS FOR MEDICAID ELIGIBILITY DETERMINATION.

Requests for Medicaid eligibility determination for persons who may be medically indigent may only be accessed by a hospital or a county through a request for Medicaid eligibility determination addressed to the Department. By signing a request for Medicaid eligibility determination, each hospital or county requesting a Medicaid eligibility determination agrees to comply with these rules. ()

01. Form of Request. Each hospital or county requesting a Medicaid eligibility determination under these rules must apply to the Department on a form provided by the Department and must provide all information required by the Department. ()

02. Filing Request. Each request for Medicaid eligibility determination submitted to the Department under these rules must be signed by an authorized representative of the hospital or the county. The request for Medicaid eligibility determination may be submitted to the Department by mail, electronically, or by facsimile as described in Section 005 of these rules. ()

03. Application for Financial Assistance Required. A completed and signed application for financial assistance under Title 31, Chapter 35, Idaho Code, must be submitted and transmitted to the Department along with the request for Medicaid eligibility determination.

()

04. Other Information as Requested. Each hospital or county requesting a Medicaid eligibility determination by the Department under these rules must provide all other information that may be requested by the Department for the proper administration and enforcement of the provisions of these rules. ()

05. Cooperation of Applicant, Third-Party Applicant, and Obligated Person. Each applicant, third-party applicant, and obligated person must cooperate with the Department and provide documentation necessary to complete the Department's determination of Medicaid eligibility. ()

111. -- 119. (RESERVED).

120. TIME LIMITS.

Each request for Medicaid eligibility determination submitted to the Department under these rules must be filed in accordance within the following time limits: ()

01. Hospital. Within one (1) working day of the completion of the hospital's initial review that determines a patient may be medically indigent, the hospital must transmit a copy of the completed application for financial assistance and a request for Medicaid eligibility determination to the Department. ()

02. County. Within one (1) business day of the filing of an application for financial assistance under Title 31, Chapter 35, Idaho Code, in the clerk's office, the clerk must transmit a copy of the completed application for financial assistance and request for Medicaid eligibility determination to the Department. ()

121. -- 129. (RESERVED).

130. ELIGIBILITY DETERMINATION.

Each request for Medicaid eligibility determination submitted to the Department under this chapter of rules will be processed by the Department in accordance with the following rules: ()

01. Medicaid. IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." ()

02. AABD. IDAPA 16.03.05, "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)." ()

03. Refugee. IDAPA 16.03.06, "Refugee Medical Assistance." ()

04. Logging an Application and Request. The Department will log each application and request for Medicaid eligibility determination. ()

05. Time Limits on Determinations. The Department will process each request for Medicaid eligibility determination within forty-five (45) days of receiving the request, unless

prevented by events beyond the Department's control. ()

131. -- 139. (RESERVED).

140. NOTICE OF DECISION ON ELIGIBILITY FOR MEDICAID.

01. Denial on Request Submitted by a Hospital. If the Department determines that an applicant is not eligible for Medicaid, the Department will promptly notify the applicant and the hospital of its determination. The Department will transmit a copy of its determination and a copy of the application to the respective county clerk. The clerk will treat the copy of the Department's determination and the copy of the application as an application for financial assistance under Title 31, Chapter 35, Idaho Code. Denial of Medicaid eligibility is not a determination of medical indigency or eligibility for financial assistance under the county Medically Indigent Program or the Catastrophic Health Care Cost Program. ()

02. Denial on Request Submitted by a County. If the Department determines that an applicant is not eligible for Medicaid, the Department will promptly notify the applicant and the respective county clerk of its determination. Denial of Medicaid eligibility is not a determination of medical indigency or eligibility for financial assistance under the County Medically Indigent Program or the Catastrophic Health Care Cost Program. ()

03. Approval of Medicaid Eligibility. If the Department determines that an applicant is eligible for Medicaid, the Department will act on the request and application as an application for Medicaid and notify the applicant, *according to provisions in IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD).* ()

141. -- 149. (RESERVED).

150. ADDITIONAL DUTIES AND RESPONSIBILITIES OF HOSPITALS.

01. Additional Duties and Responsibilities. Each hospital submitting an application and request for Medicaid eligibility determination under these rules must: ()

a. Cooperate with the Department, the Board, and the respective counties of the state and contractors retained by the Board or the respective County Commissioners. ()

b. Assist applicants in completing an application form and request for Medicaid eligibility determination. ()

02. Comply with Confidentiality Laws and Rules. Each hospital must comply with IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records," and all applicable state and federal laws, rules, and regulations pertaining to the confidentiality of, and the disclosure of, information and records. ()

03. Comply with HIPAA. Each hospital must comply with the Health Insurance Portability and Accountability Act (HIPAA). ()

151. -- 159. (RESERVED).

160. ADDITIONAL DUTIES AND RESPONSIBILITIES OF COUNTIES.

01. Additional Duties and Responsibilities. Each respective county submitting an application and request for Medicaid eligibility determination under these rules must: ()

a. Cooperate with the Department, the Board, the hospital, and contractors retained by the Department or the Board. ()

b. Assist applicants in completing an application form and request for Medicaid eligibility determination. ()

02. Comply with Confidentiality Laws and Rules. Each respective county must comply with IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records," and all applicable state and federal laws, rules and regulations pertaining to the confidentiality of, the disclosure of, information and records. ()

03. Comply with HIPAA. Each respective county must comply with the Health Insurance Portability and Accountability Act (HIPAA). ()

161. -- 999. (RESERVED).

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

DOCKET NO. 16-0504-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 55-5209, Idaho Code.

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

The Idaho Council on Domestic Violence is updating the minimum standards document for the Domestic Violence Batterer Treatment Program that is incorporated by reference in this chapter of rules. The minimum standards are being updated to reflect current research on domestic violence treatment, in particular, evidence-based batterer intervention.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 270 through 274.](#)

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

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

DATED this 12th day of November, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor

P.O. Box 83720, Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING NOTICE 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 39-5209, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

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

The Idaho Council on Domestic Violence is proposing to update the minimum standards document for the Domestic Violence Batterer Treatment Program that is incorporated by reference in this chapter of rules. The minimum standards are being updated to reflect current research on domestic violence treatment, in particular, evidence-based batterer intervention.

The proposed changes will benefit individuals and organizations involved in the effective response to domestic violence as well as those receiving treatment, their families, and their communities. The rule changes will support, with best practices, an effective response to domestic violence that promotes safety, accountability of offenders, and a positive family environment.

In addition, the standard “required sections” of this chapter of rules are being included and updated to conform to the current requirements of the Office of the Administrative Rules Coordinator.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted.

However, no Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin. **Extensive informal negotiated rulemaking in the form of open forums was held during June and July of 2009, in Boise, Idaho Falls, and Coeur d'Alene. For more information, go to: <http://codvbtps.blogspot.com/>.**

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 11th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0504-1001

000. LEGAL AUTHORITY.

~~Pursuant to Under Sections 39-5207(2) and 39-5209, Idaho Code, the Council on Domestic Violence and Victim Assistance is authorized to promulgate, adopt, and amend rules to implement the provisions of the Domestic Violence Project Grants Act, as contained in Chapter 52, Title 39, Idaho Code. Furthermore, pursuant to Executive Order No. 85-18 and Section 39-5208(2), Idaho Code, the Council is authorized to administer such other funds as may be made available to accomplish in whole or in part any of the purposes of the laws or orders administered by the Council and to disseminate information on the availability of funds and the application process.~~
(5-3-03)()

001. TITLE AND PURPOSE SCOPE.

01. Title. These ~~title of these~~ rules ~~are to be cited as Idaho Department of Health and Welfare Rules;~~ **is** IDAPA 16.05.04, "Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding."
(5-3-03)()

02. Purpose Scope. These rules ~~hereby establish the~~ **define the application process, eligibility determination, and other requirements for the grants administered by the** Idaho Council on Domestic Violence and Victim Assistance ~~and subsequent authority to award state and federal~~

~~grants to programs in the state of Idaho that provide aid to victims of crime. (5-3-03)()~~

03. Relationship to the Department of Health and Welfare. The Council on Domestic Violence and Victim Assistance is attached to the Department of Health and Welfare for fiscal and administrative purposes, and any grant awards, disbursement of funds, and other procedural matters must be in compliance with Department requirements. Programmatically the Council is independent of the Department. (5-3-03)

~~002.—003. (RESERVED).~~

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. ()

003. ADMINISTRATIVE APPEALS.

The requirements for appealing a grant award decision are found under Section 033 of these rules. ()

004. INCORPORATION BY REFERENCE.

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

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

a. At the Idaho Council on Domestic Violence and Victim Assistance, ~~450 West State Street~~ 304 North 8th Street, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0036. (5-3-03)()

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

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

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

b. “Minimum Standards for ~~Batterer Treatment~~ Domestic Violence Offender Intervention Programs,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective ~~April 29, 1999~~ July 1, 2011. (5-3-03)()

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

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. ()

a. The mailing address for the business office of the Idaho Department of Health and Welfare is P.O. Box 83720, Boise, Idaho 83720-0036. ()

b. The mailing address for the business office of the Idaho Council on Domestic Violence and Victim Assistance is P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. ()

a. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

b. The business office of the Idaho Council on Domestic Violence and Victim Assistance is located at 304 North 8th Street, Suite 140, Boise, Idaho 83702. ()

04. Telephone. ()

a. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

b. The telephone number for the Idaho Council on Domestic Violence and Victim Assistance is (208) 332-1540, or, Toll Free: 1-800-291-0463. ()

05. Internet Website. ()

a. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ()

b. The website for the Idaho Council on Domestic Violence and Victim Assistance is found at <http://www.icdv.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

0057. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

033. APPEAL OF GRANT AWARD DECISION.

No later than fifteen (15) days from the date of written notification from the Council to a program announcing denial of its grant application or suspension or termination of its grant, a program may file a written request for reconsideration of the Council's decision. All requests for reconsideration must be addressed and submitted to the executive director of the Council.

(3-12-90)

01. Contents of Request for Reconsideration. Any request for reconsideration must contain all pertinent facts supporting the program's request for the Council to reconsider its grant award decision.

(3-12-90)

02. Disposition of Request for Reconsideration. Upon notification of a timely request for reconsideration, the chairperson of the Council will appoint a panel composed of three (3) Council members to review the contents of the request and all pertinent data upon which the Council based its original decision.

(3-12-90)

03. Disposition of Funds for Service Area Pending Reconsideration. While a timely and valid request for reconsideration received from a program is pending, fifty percent (50%) of the funds allocated to the service area in which the program is located will be held.

(3-12-90)

04. Issuance of Decision. Following consideration of all data pertinent to the issue, the appointed panel will prepare a written report of its deliberations and issue a dated decision concerning the recommended resolution of the dispute. Copies of the report and the decision will be transmitted to the full Council and to the program submitting the request.

(3-12-90)

05. Appeal of the Council's Decision. If the program is unsatisfied by the decision of the Council, a written appeal setting out the basis for the appeal may be filed. It must be received by the executive director of the Council no later than fifteen (15) days from the date of the Council's written decision.

(3-12-90)

06. Hearing on Appeal. Upon notification of receipt of a timely appeal, the chairperson of the Council will appoint a hearing officer to convene a hearing pursuant to in accordance with the Idaho Administrative Procedure Act, Sections 67-520~~91~~, et seq. through 67-521~~2~~, Idaho Code.

(3-12-90)()

(BREAK IN CONTINUITY OF SECTIONS)

037. -- 99~~79~~. (RESERVED).

~~998. INCLUSIVE GENDER~~

~~For the purposes of these rules, words used in the feminine gender include the masculine and vice versa, where appropriate. (3-12-90)~~

~~999. SEVERABILITY~~

~~Idaho Department of Health and Welfare Rules, IDAPA 16.05.04, "Rules Governing the Domestic Violence and Victim Assistance Grant Projects" are severable. If any rule or part thereof, or the application of such rule to any person or circumstances is declared invalid, that invalidity does not affect the validity of any remaining portion of these rules. (3-12-90)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-1629, 56-202(b), and 56-1003, Idaho Code; Section 56-803, Idaho Code, re: adoption and guardian assistance; Title IV, Parts B and E of the Social Security Act, as amended by Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) re: guardianship assistance; and Title IV, Part E of the Social Security Act, Section 475(a)(18)(A)&(B) as amended by the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (P.L. 103-382, 42 U.S.C. 622).

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

The Department is amending the proposed rule based on comments received from the Region X federal review of the rule changes. The amendments clarify the language regarding compliance with the requirements of the Multiethnic Placement Act of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 322 through 345.](#)

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

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

DATED this 12th day of November, 2010.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 56-202(b), and 56-1003, Idaho Code; Section 56-803, Idaho Code, re: adoption and guardian assistance; Title IV, Parts B and E of the Social Security Act, as amended by Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) re: guardianship assistance; and Title IV, Part E of the Social Security Act, Section 475(a)(18)(A)&(B) as amended by the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (P.L. 103-382, 42 U.S.C. 622).

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 15, 2010.

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

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

In order to bring these rules into compliance with the Department's Title IV-E State Plan, rules are being added that:

(1) Address Title IV-E relative guardianship assistance in order to provide for a permanent living situation with a relative for older children, and (2) further detail the requirements of the Multiethnic Placement Act (MEPA).

The Fostering Connections to Success and Increasing Adoptions Act of 2008 has changed eligibility for Title IV-E adoption assistance. Within the next eight years (2010-2018), those changes could greatly expand the number of adopted children eligible for adoption assistance subsidies. As a result, it is being clarified in rule who is eligible to receive an adoption subsidy, so those children who are most in need will continue to be able to receive assistance.

In order to bring the rules into alignment with current practice, (1) the rules regarding contact requirements for foster children in out-of-state care are being clarified, (2) risk-oriented language in rule is being replaced with safety-oriented language, and (3) the requirement for parent signature on the alternate care plan is being removed from rules.

Since the category of “professional foster care” has been eliminated from rule, the Department is replacing this term with an actual dollar amount that establishes the maximum adoption assistance for children in foster care who are eligible for personal care services. This will simplify the foster care rate structure and reduce confusion for foster parents.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. These rule changes are being made to bring the rules into alignment with the Department’s Title IV-E State Plan and applicable federal regulations.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 4th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-1001

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

For the purposes of these rules, the following terms are used:

(5-8-09)

01. Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA). Federal law

whose purpose is to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. ()

042. Adoption Assistance. Funds provided to adoptive parent(s) of a child who has special needs or who could not be adopted without financial or medical assistance. (5-8-09)

043. Adoption Services. Protective services through which a child is provided with a permanent home, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (5-8-09)

044. Alternate Care. Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment, and institutional resources, under the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act, 25 U.S.C. Sections 1901-1963. (5-8-09)

045. Alternate Care Plan. A federally-required component of the Family Plan for a child in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, the child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical, and other information important to the day-to-day care of the child. (5-8-09)

056. Area of Concern. Circumstances that brought a child and family to the attention of the Department. These circumstances typically involve safety issues that put the child at risk of harm. (3-30-07)

067. Assessment. The first step in the planning process, the outcome of which is the systematic documentation of the family's areas of concern, their strengths, and desired outcomes. (3-30-07)

078. Board. The Idaho State Board of Health and Welfare. (3-18-99)

089. Case Management. A change-oriented service to families that ~~ass~~ensures and coordinates the provision of family ~~risk~~ ongoing assessment, family service planning, treatment, planning for permanency, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (5-8-09)()

0910. Certified Adoption Professional (formerly "qualified individual"). An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

11. Child and Family Services. Those programs and services provided to families and children, administered by the Department in accordance with these rules. ()

102. Child Protection. All children under eighteen (18) who have been harmed or

threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter must be served without regard to income. (3-30-07)

143. Child Protective Services. Services provided in response to potential, alleged, or actual abuse, neglect, or abandonment of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the “Child Protective Act.” (5-8-09)

124. Compact Administrator. The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-2101 et seq., Idaho Code; “Interstate Compact on the Placement of Children,” Section 16-1901 et seq., Idaho Code; or the “Interstate Compact on Adoption and Medical Assistance,” Section 39-7501 et seq., Idaho Code. (5-8-09)

135. Daycare for Children. Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child’s or children’s own home or homes. (3-18-99)

146. Department. The Idaho Department of Health and Welfare. (3-18-99)

157. Deprivation. One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the principal wage earner parent. (3-30-07)

168. Desired Result. Behaviorally-specific description of how the family circumstances will look when the ~~risk~~ **safety** factors that brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (~~3-30-07~~)()

179. Director. The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

1820. Extended Family Member of an Indian Child. As defined by the law, or custom of an Indian child’s tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.

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

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

~~02. **Child and Family Services.** Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (5-8-09)~~

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

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

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

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

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

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

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

~~09. **Guardianship Assistance.** State benefits provided to legal guardian(s) for the support of a child for whom efforts to place for adoption have been unsuccessful and who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (3-30-07)~~

~~10. **Immediate Safety Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety threats, risks, or immediate service needs exist that require further Child and Family Services response. (5-8-09)~~

H09. Independent Living. Services provided to eligible foster or former foster youth, ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)

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

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

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

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

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

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

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

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

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

186. Interethnic Adoption Provisions of 1996 (IEPA). IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (~~5-3-03~~)()

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

2018. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.

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

01. Legal Guardianship. A judicially-created relationship, in accordance with Title

~~15. Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term “legal guardian” means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights. (5-3-03)()~~

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

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

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

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

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

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

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

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

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

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

12. Qualified Expert Witness--ICWA. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

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

(3-18-99)

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; (3-18-99)

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community; or (3-18-99)

d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

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

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

145. Reservation. Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

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

167. Responsible Party. ~~An individual such as a~~ Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. (5-8-09)()

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.

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

01. SSI (Supplemental Security Income). Income maintenance grants for eligible persons who are aged, blind, or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

02. Safety Assessment. A process and standardized tool for contact between a family services worker and a family to objectively determine if safety threats, or immediate service needs exist that require further Child and Family Services response. ()

023. Safety Plan. Plan developed by the Department and a family which assures the

immediate safety of a child who has been determined to be conditionally safe or unsafe.(3-30-01)

04. State-Funded Guardianship Assistance. Benefits described in Subsection 702.04 and Section 704 of these rules provided to a legal guardian for the support of a child who meets the eligibility criteria. ()

~~035~~. **TAFI.** Temporary Assistance to Families in Idaho. (3-18-99)

~~046~~. **Title IV-E.** Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

~~057~~. **Title IV-E Foster Care.** Child care provided in lieu of parental care in a foster home, children’s agency, or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (5-8-09)

~~068~~. **Title XIX (Medicaid).** Title under the Social Security Act which provides “Grants to States for Medical Assistance Programs.” (3-18-99)

~~079~~. **Title XXI.** (Children’s Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

~~0810~~. **Tribal Court.** A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

~~0911~~. **Unmarried Parents’ Services.** Services aimed at achieving or maintaining self-reliance or self-support for unmarried parents. These services include counseling for any unmarried parents who need such service in relation to their plans for their children and arranging for and paying for prenatal and confinement care for the well-being of the parent and infant. Services for unmarried parents are provided in accordance with Section 56-204A, Idaho Code. (5-8-09)

~~102~~. **Voluntary Services Agreement.** A written and executed agreement between the Department and parents or legal guardians regarding the goal, areas of concern, desired results, and task responsibility, including payment. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

030. CORE CHILD AND FAMILY SERVICES.

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

01. Crisis Services. Crisis Services are an immediate response to ~~ass~~ensure safety

when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess ~~risk~~ **safety** and place in alternate care, if necessary, to ~~ensure~~ **ensure** safety for the child. (5-8-09)()

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

03. Assessment and Safety/Service Planning Services. Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed ~~together~~ by the worker, **together with** the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (5-8-09)()

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

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

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

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

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

seq., Idaho Code, the “Interstate Compact on the Placement of Children.” Placements must be in compliance with all state and federal laws. (5-8-09)

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

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

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

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

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

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

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

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

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

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

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

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

11. Administrative Services. Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and

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

031. -- 049. (RESERVED).

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to ~~ass~~ensure timely permanency for children and to protect the rights of children, their families and their tribes. ~~(3-30-01)~~()

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with ~~their~~ **his** family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. ~~(5-8-09)~~()

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

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

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

04. Least Restrictive Setting. Efforts will be made to ~~ass~~ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child.

~~(5-8-09)~~()

05. Legal Requirements for Indian Children. In the case of an Indian child, notice of the pending proceeding must be sent by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement. (3-30-07)

06. Visitation for Child's Parent(s) or Legal Guardian(s). Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (3-30-07)

07. Notification of Change in Placement. Written notification to the child's parent(s) or legal guardian(s) within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA. (5-3-03)

08. Notification of Change in Visitation. Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

09. Notification of Right to Participate and Appeal. Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-30-07)

10. ICWA Placement Preferences. Compliance with the foster care placement preferences of the Indian Child Welfare Act. (3-18-99)

11. Compliance with Requirements of the Multiethnic Placement Act ~~and~~ of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996. ~~(3-30-01)~~()

a. *The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin.* ()

b. *The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin;* ()

c. *To remain eligible for federal assistance for their child welfare programs, the Department must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes;* ()

d. A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests; ()

e. Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and ()

f. Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978. ()

12. Family Decision-Making and Plan Development. (3-30-01)

a. A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)

b. Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)

c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

13. Compelling Reasons. Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

14. ASFA Placement Preferences. The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)

a. Return home if safe to do so; (3-30-01)

b. Adoption or legal guardianship by a relative or kin; (5-8-09)

c. Adoption or legal guardianship by non-relative; (3-30-01)

d. Another planned permanent living arrangement such as long-term foster care. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

405. ALTERNATE CARE CASE MANAGEMENT.

Case management must continue while the child is in alternate care and must ensure the following: (3-30-07)

01. Preparation for Placement. Preparing a child for placement in alternate care is the joint responsibility of the child's family, the child (when appropriate), the family services worker, and the alternate care provider. (3-30-07)

02. Information for Alternate Care Provider. The Department and the family must inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including: (3-30-07)

a. Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; (3-18-99)

b. The name of the child's doctor; (3-18-99)

c. The child's current functioning and behaviors; (3-18-99)

d. The child's history and past experiences and reasons for placement into alternate care; (3-30-01)

e. The child's cultural and racial identity; (3-18-99)

f. Any educational, developmental, or special needs of the child; (3-18-99)

g. The child's interest and talents; (3-18-99)

h. The child's attachment to current caretakers; (3-18-99)

i. The individualized and unique needs of the child; (3-18-99)

j. Procedures to follow in case of emergency; and (3-18-99)

k. Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

03. Consent for Medical Care. Parent(s) or legal guardian(s) must sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the family case record. (3-30-07)

04. Financial Arrangements. The family services worker must assure that the

alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (3-30-07)

05. Contact with Child. The family, the family services worker, and the alternate care provider must establish a schedule for frequent and regular visits with the child by the family and by the family services worker or designee. (5-8-09)

a. Face-to-face contact with a child by the responsible party must occur at least monthly or more frequently depending on the needs of the child or the provider, or both, and the stability of the placement. Face-to-face contact may be made in settings other than where the child resides as long as contact between the responsible party and the child occurs where the child resides a minimum of once every sixty (60) days. (5-8-09)

b. The Department will have strategies in place to detect abuse, neglect, or abandonment of children in alternate care. (5-8-09)

c. Face-to-face contact between the responsible party and a child placed in an in-state group or residential care facility, located a significant distance from the responsible party's office is required a minimum of once every ninety (90) days. Communication by phone between the responsible party and the child must occur at least monthly. (5-8-09)

d. Frequent and regular contact between the child and parents and other family members will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures, and the use of video and other technology as may be relevant and available. (3-30-07)

e. Children who are in out-of-state placements through the Interstate Compact on the Placement of Children (ICPC) must be contacted face-to-face no less frequently than every six (6) months, by either the responsible party in Idaho, by a representative of the state in which the child is placed, or by a private agency contracted by either. Idaho will request the state in which the child is placed to have face-to-face contact with the child on a monthly basis. If the policy of the state in which the child is placed allows only for face-to-face contact every six (6) months, the responsible party in Idaho will contact the child and the child's caregiver each month by phone to confirm the child's safety and well-being. ~~(5-8-09)~~()

06. Discharge Planning. Planning for discharge from alternate care will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (5-8-09)

07. Transition Planning. Planning for discharge from alternate care into a permanent placement will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-30-07)

08. Financial and Support Services. As part of the discharge planning, Departmental resources will be coordinated to expedite access to Department financial and medical assistance and community support services. (3-30-07)

406. -- 421. (RESERVED).

422. ALTERNATE CARE PLANNING.

The elements of Aalternate care planning is are mandated by the provisions of Sections 471(a)(15) and 475, P.L. 96-272 Title IV-E, Sections 471(a)(16), 475(1), and 475(5)(A) and (D) of the Social Security Act. (3-18-99)()

01. Alternate Care Plan Required. Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. (5-8-09)

a. The purpose of the alternate care plan is to facilitate the safe return of the child to his ~~or her~~ own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible. (5-8-09)()

b. The alternate care plan must be included as part of the family service plan. (5-8-09)

02. Written Alternate Care Plan. The Department must ~~have~~ completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care and at least every six (6) months thereafter. A copy of the alternate care plan will be provided to the child's parent, legal guardian, foster parent, Indian custodian, tribe, and to the child if he is over twelve (12) years of age. (5-8-09)()

~~**a.** A parent or legal guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. (5-8-09)~~

~~**b.** The alternate care plan must include documentation that a parent or legal guardian have been provided written notification of: (5-8-09)~~

~~**i.** Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (3-18-99)~~

~~**ii.** Any change of placement, when the child is relocated to another alternate care or institutional setting immediately, and no later than seven (7) days after placement; and (5-8-09)~~

~~**iii.** Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements. (3-30-01)~~

~~**e.** All parties involved in developing the alternate care plan, including the alternate care provider, parent or legal guardian, and the child, if of appropriate developmental age: (5-8-09)~~

~~**i.** Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and (5-8-09)~~

~~**ii.** Will receive a copy of the alternate care plan from the Department. (5-8-09)~~

(BREAK IN CONTINUITY OF SECTIONS)

553. ASSIGNING REPORTS FOR ~~RISK~~ SAFETY ASSESSMENT.

The Department must assign all reports of possible abuse, neglect, or abandonment of children for ~~risk~~ safety assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

555. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.

In all Priority I and II cases where the alleged victim of abuse, neglect, or abandonment is through the age of six (6), review by supervisory or team of all case documentation and other facts will be conducted within forty-eight (48) hours of initiation of the ~~risk~~ safety assessment. Such review will be documented in the file with the signature of the supervisor or team leader, time and date, whether additional ~~risk~~ safety-related issues will be pursued and by whom, and any planning for initiation of services. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

559. CHILD PROTECTION ~~IMMEDIATE~~ SAFETY AND COMPREHENSIVE ASSESSMENTS.

The Department's ~~immediate~~ safety and comprehensive assessments must be conducted in a standardized format and must utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(~~ren~~) ~~or children~~ involved and the immediate family and a records check for history with respect to child protection issues. (3-30-07)()

01. Interview of a Child. The interview of a child concerning a child protection report must be conducted: (3-30-07)

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker

conducting the interview must: (3-30-07)

a. Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the family services worker and his supervisor must be given to ensure the family has a contact for questions and concerns that may arise following the visit; (3-30-07)

b. Determine if the family is of Indian heritage for the purposes of ICWA; (3-18-99)

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

03. Collateral Interviews. Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

04. Completion of a Comprehensive Assessment. ~~An Immediate Protection/~~ Safety ~~Plan~~ Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When ~~there are findings of moderate or higher risk~~ safety threats are identified in the safety assessment and ~~a~~ the case remains open for services, a comprehensive assessment must be completed ~~within thirty (30) days of initial contact with the child of concern.~~ (3-30-07)()

05. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

a. Interviewing the alleged perpetrator; (3-18-99)

b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)

c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

06. Notification of the Person Who Made the Referral. The Department must notify the person who made the child protection referral when the risk safety assessment has been completed. (3-30-07)()

560. DISPOSITION OF CHILD PROTECTION REPORTS.

Within five (5) days following completion of risk safety assessments, the Department will determine whether the reports are substantiated or unsubstantiated. All persons who are the subject of a child protection risk safety assessment will be notified of the disposition of the assessment. (4-2-08)()

01. Substantiated. Child abuse, neglect, or abandonment reports are substantiated by one (1) or more of the following: (5-8-09)

- a. Witnessed by a family services worker, as defined in Section 011 of these rules; (4-2-08)
- b. A court determines, in an adjudicatory hearing, that a child comes within the jurisdiction of the Child Protective Act, Title 16, Chapter 16, Idaho Code; (5-8-09)
- c. A confession; (4-2-08)
- d. Corroborated by physical or medical evidence; or (4-2-08)
- e. Established by evidence that it is more likely than not that abuse, neglect, or abandonment occurred. (5-8-09)

02. Unsubstantiated. Child abuse, neglect, or abandonment reports are unsubstantiated when they are not found to be substantiated under Subsection 560.01 of this rule. For intradepartmental statistical purposes, the Department will indicate whether the unsubstantiated disposition of the ~~risk~~ **safety** assessment was due to: (~~5-8-09~~)()

- a. Insufficient evidence; or (5-3-03)
- b. An erroneous report. (4-2-08)

561. CHILD PROTECTION CENTRAL REGISTRY.

The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, July 27, 2006, 120 Stat. 587, has directed the states to establish a central registry for the purpose of sharing information about persons who have substantiated reports of abuse, neglect, or abandonment against children. The Child Protection Central Registry was established under the authority of Section 16-1629(3), Idaho Code. The primary purpose of the Child Protection Central Registry is to aid the Department in protecting children and vulnerable adults from individuals who have previously abused, neglected, or abandoned children. The Child Protection Central Registry maintained by the Department is separate and apart from the central registry for convicted sexual offenders maintained by the Idaho State Police under Title 18, Chapter 83, Idaho Code. The Child Protection Central Registry provisions in this chapter of rules apply to ~~risk~~ **safety** assessments conducted by the Department after October 1, 2007. (~~5-8-09~~)()

(BREAK IN CONTINUITY OF SECTIONS)

568. COURT-ORDERED CHILD PROTECTION ~~RISK~~ **SAFETY ASSESSMENT.**

When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court may order that an investigation/~~risk~~ **safety** assessment be conducted by the Department. Court orders

for preliminary child protective ~~risk~~ safety assessment and for any subsequent assessment the court may deem necessary will be served on the Department supervisor for child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor must immediately initiate the ~~risk~~ safety assessment and consult with the court promptly if there are any obstacles ~~proceeding~~ preventing its completion. Immediately upon completing the report, the Department must make a written report to the court. (4-2-08)()

569. PETITION UNDER THE CHILD PROTECTIVE ACT.

If any incident~~et~~ of child abuse, neglect, or abandonment is substantiated through ~~an immediate~~ safety or comprehensive assessment, or both, or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department will request the prosecuting attorney to file a Child Protective Act petition. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

571. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.

Where no other community resources are available and when ordered by the district courts, the Department will, for a fee of thirty-five dollars (\$35) per hour, conduct ~~immediate~~ safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. (3-30-07)()

01. Requests From Private Attorney. If a parent's attorney requests ~~an immediate~~ safety or comprehensive assessment, or both, and a report of findings regarding the fitness of a parent, the attorney must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (3-30-07)()

02. Conduct of the Assessment. In conducting the assessment, the family services worker must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (3-30-07)

03. Report to Court. The family services worker will provide a report only to the Magistrate judge who ordered the assessment, and must use the Department's format for the assessment of need. The report must describe what was observed about the home conditions and the care of the child(ren). (3-30-07)

04. Department Clients. If the family is or has been a client of the Department, disclosure of information must comply with IDAPA 16.05.01, "Use and ~~Protection~~ Disclosure of Department Records." (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

702. ~~SERVICES TO BE PROVIDED IN LEGAL~~ CONDITIONS FOR GUARDIANSHIPS ASSISTANCE.

~~In addition to the family services provided under these rules, the Department will provide the following:~~ The following conditions must be met for a child to be eligible for federally-funded or state-funded guardianship assistance. (5-8-09)()

01. ~~Preparation for Placement.~~ Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parent(s) and assisting the child with the transition into the home of the legal guardian(s). Assessment of Suitability. The Department or its contractor will determine the suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study. (5-3-03)()

02. Eligibility for Guardianship Assistance. The Department will determine eligibility for guardianship assistance for each child placed in the legal custody of the Department prior to the finalization of the guardianship. The child will first be considered for eligibility for a federally-funded subsidy. Should the child be found ineligible for a federally-funded subsidy, the child will then be considered for a state-funded subsidy. ()

023. Guardianship and Foster Care Licensure. To receive guardianship assistance, a potential legal guardian(s) must apply for and receive a foster care license before any child in the guardianship of the Department can be placed in their home. (5-3-03)()

04. Guardianship Assistance Agreements and Payments. The Department and the prospective legal guardian must enter into a written agreement prior to the finalization of the guardianship. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate a child would receive if living in family foster care in Idaho. Eligibility for guardianship assistance is based on the child's needs. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. The Department will provide the prospective legal guardian with a copy of the agreement. All Guardianship Assistance Agreements must contain the following: ()

a. The amount and manner in which the guardianship assistance payment will be provided to the prospective legal guardian; ()

b. The manner in which the payment may be adjusted periodically in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child; ()

c. Any additional services and assistance for which the child and legal guardian will be eligible under the agreement; ()

- d.** The procedure by which the legal guardian may apply for additional services; ()
- e.** A statement that the agreement will remain in effect without regard to the state of residency of the legal guardian; ()
- f.** The procedure by which the Department will make a mandatory annual evaluation of the need for continued assistance and the amount of the assistance; and ()
- g.** Guardianship assistance payments are prospective only. There will be no retroactive benefits or payments. ()

~~**03. Financial Assistance to Obtain Guardianship.** For potential legal guardian(s) who are not able to afford the attorney and court costs to obtain legal guardianship of a child in the Department's guardianship, financial assistance may be available from the Department. Financial assistance may be provided regardless of the guardian's state of residence. (5-3-03)~~

~~**04. Eligibility for Guardianship Assistance.** A determination of eligibility for guardianship assistance must be made for each child placed in a legal guardianship through the Department prior to the finalization of the guardianship. Eligibility for guardianship assistance is based on the child's identified needs, and requires completion of the legal termination of parental rights and documentation of unsuccessful efforts to place the child for adoption. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. (3-30-07)~~

~~**05. Guardianship Assistance Agreement.** The region will negotiate a written guardianship assistance agreement with the prospective legal guardian(s). The agreement must be fully executed by all parties prior to the finalization of the guardianship in order to be valid. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate the child would receive if he or she were living in family foster care in Idaho. Idaho Medicaid benefits can only be used in Idaho. There is no reciprocity with other state's Medicaid programs. Guardianship benefits are subject to availability and are to be reviewed by the Department and the legal guardian(s) at least annually. This benefit terminates on the child's eighteenth birthday regardless of the child's academic standing, physical, or developmental delays. (3-30-07)~~

~~**06. Revocation of Legal Guardianship.** Any party including the Department or the child, if age fourteen (14) or older, may petition the court to have the legal guardian(s) removed. Guardianship assistance is terminated when a court revokes the guardianship. (5-3-03)~~

~~**07. Termination of Guardianship Assistance When Child Leaves Home of the Legal Guardian(s).** If guardianship is revoked and the child(ren) are returned to the Department's guardianship, guardianship assistance will be terminated. If it is anticipated that another legal guardian(s) will be appointed by the court, the new guardian(s) will need to complete application for guardianship assistance before the guardianship is finalized. The guardian(s) is required to immediately report to the Department any reason which would make them ineligible to receive guardianship assistance, such as, the child leaves the home, the child marries or enters the~~

~~military.~~

~~(5-3-03)~~

~~**08. Retroactive Benefits.** Legal guardians appointed on or before July 1, 2001, are not eligible for guardianship assistance. There will be no retroactive benefits paid by the Department for a child whose legal guardian(s) was appointed before July 1, 2001 or for guardians who did not negotiate a guardianship assistance agreement prior to the finalization of the guardianship.~~

~~(5-3-03)~~

05. Termination of Guardianship Assistance. Federally-funded or state-funded guardianship assistance benefits and cash payments are automatically terminated when: ()

a. A court terminates the legal guardianship or removes the legal guardian; ()

b. The child no longer resides in the home of the legal guardian, and the legal guardian no longer provides financial support for the child; ()

c. The child has reached the age of eighteen (18) years, regardless of the child's educational status or physical or developmental delays; or ()

d. The child marries, dies, or enters the military. ()

06. Administrative Review for Guardianship Assistance. The prospective legal guardian has twenty-eight (28) days from the date of the Department's notification of the guardianship assistance determination, to request an administrative review. The determination will be reviewed by the FACS Division Administrator, and a decision will be rendered to either affirm, reverse, or modify, the decision. The Department will notify the individual, by mail, of the FACS Division Administrator's decision, of his right to appeal, and procedures for filing an appeal according to requirements in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

703. FEDERALLY-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENTS, AND BENEFITS.

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a federally-funded guardianship assistance for an eligible child and a relative guardian. ()

01. Eligibility. A child is eligible for a federally-funded guardianship if the Department determines the child meets the following: ()

a. Is fourteen (14) years of age, or older, sometime during the consecutive six- (6) month residence with the prospective relative legal guardian as specified in Subsection 703.01.c. of this rule; ()

b. Has been removed from his or her home pursuant to a voluntary placement agreement, or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; ()

c. Being returned home or adopted are not appropriate permanency options for the child; ()

d. Has been eligible for Title IV-E foster care maintenance payments during at least six (6) consecutive months during which the child resided in the home of the prospective relative legal guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While it is not required that Title IV-E foster care maintenance payments have been paid on behalf of the child during the six-month timeframe, it is required the child meet all Title IV-E foster care maintenance payment eligibility criteria in the home of the fully licensed or approved relative foster parent for a consecutive six- (6) month period to be eligible for Title IV-E guardianship assistance payment with that prospective relative legal guardian; ()

e. Has been consulted regarding the legal guardianship arrangement; and ()

f. Has demonstrated a strong attachment to the prospective relative legal guardian, and the relative legal guardian has a strong commitment to caring permanently for the child. ()

02. Siblings of an Eligible Child. ()

a. The Department may make guardianship assistance payments in accordance with a guardianship assistance agreement on behalf of each sibling of an eligible child, under the age of eighteen (18), who is placed with the same relative under the same legal guardianship arrangement if the Department and the relative legal guardian agree that the placement is appropriate. ()

b. Nonrecurring expenses associated with obtaining legal guardianship of the eligible child's siblings are available to the extent the total cost does not exceed two thousand dollars (\$2,000). ()

c. The agency is not required to place siblings with the relative legal guardian of the child at the same time with the eligible child for the siblings to qualify for a cash payment. ()

d. A sibling of the eligible child does not have to meet the eligibility criteria for the relative legal guardian to receive a guardianship assistance payment or for the relative legal guardian to receive nonrecurring expenses. ()

03. Medicaid. A child who is eligible for federally-funded relative guardianship assistance is eligible for Title XIX Medicaid in the state where the child resides. ()

04. Case Plan Requirements. A child who is eligible for federally-funded relative guardianship assistance must have a case plan that includes: ()

a. How the child meets the eligibility requirements; ()

b. Steps the agency has taken to determine that return to the home or adoption is not appropriate; ()

c. The efforts the agency has made to discuss adoption with the child's relative foster parent and the reason why adoption is not an option; ()

d. The efforts the agency has made to discuss the legal guardianship and the guardianship assistance with the child's parent or parents, or the reason the efforts were not made; ()

e. The reason why a permanent placement with a prospective relative legal guardian and receipt of a guardianship assistance payment is in the child's best interests; and ()

f. If the child is not placed with siblings, a statement as to why the child is separated from his siblings. ()

05. Criminal History and Background Checks. To be eligible for a federally-funded guardianship assistance payment, all prospective legal guardians and other adult members of the household must receive a criminal history and background check clearance, according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." As a licensed foster parent, if the prospective relative legal guardian has already received a clearance, another check is not necessary. ()

06. Nonrecurring Expenses. The Department will reimburse the cost, up to two thousand dollars (\$2,000), of nonrecurring expenses associated with obtaining a federally-funded legal guardianship for an eligible child. ()

704. STATE-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENT, AND BENEFITS.

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a state-funded guardianship assistance for an eligible child and his legal guardian. ()

01. Eligibility for State-Funded Guardianship Assistance. A child is eligible for a state-funded guardianship assistance if the Department determines the child meets the following: ()

a. Assistance is based on the child's identified needs; ()

b. The child's parents have had their parental rights legally terminated; and ()

c. There is documentation of unsuccessful efforts to place the child for adoption. ()

02. Limitations on State-Funded Guardianship Assistance. State-funded guardianship assistance is subject to state appropriations and availability of state general funds. ()

03. Medicaid Benefits Under State-Funded Guardianship Assistance. State-funded guardianship assistance may include Medicaid benefits for the child(ren) receiving payment. These Medicaid benefits may only be used in Idaho. If the legal guardian moves to another state, he will be required to apply for Medicaid for the child(ren) in the new state of residency. ()

04. Nonrecurring Expenses. In cases where state-funded guardianship assistance is

being considered, if the potential legal guardian is not able to afford the attorney and court costs to obtain legal guardianship of a child in the legal custody of the Department of Health and Welfare, financial assistance may be available from the Department. Financial assistance for legal fees may be provided regardless of the legal guardian's state of residence. ()

7035. -- 709. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

- 01. Allegations.** The allegations contained in the petition. (3-30-01)
- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family. (3-30-01)
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
 - a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
 - b.** ~~The Multi-Ethnic Placement Act and Interethnic Placement Act and regulations~~

The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, ~~which must include and requires~~ individualized documentation regarding ~~this~~ the child's needs in permanent placement. (5-8-09)()

08. Compliance with the Indian Child Welfare Act. Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)

a. Notification of the pending proceedings by registered mail with return receipt requested, to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (5-3-03)

b. Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)

c. Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the right to court-appointed counsel; (5-8-09)

d. Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)

e. A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and (3-30-01)

f. Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

900. ADOPTION ASSISTANCE.

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Services, the Division will respond with a determination of the child's eligibility within forty-five (45) days. (3-30-07)

01. Determination of Eligibility for Title IV-E Adoption Assistance. Child and Family Services will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of

1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance: (5-8-09)

a. Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria at the time of removal from his home. (5-8-09)

i. If the child is removed from his home in accordance with the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home. (5-8-09)

ii. If the child is removed from the home in accordance with a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance. (5-8-09)

b. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs. (5-3-03)

i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits; (5-3-03)

ii. The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care ~~is~~ are not relevant. ~~(5-3-03)~~()

c. Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs. (5-3-03)

i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which ~~lead~~ to the removal of the child from his home; ~~(5-3-03)~~()

ii. At the time of the voluntary relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home. (5-8-09)

d. Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs. (5-3-03)

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

ii. The child continues to reside in the foster home with his minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care

prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances. (5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

02. Special Needs Criteria. The definition of special needs includes the following factors: (3-30-07)

a. The child cannot or should not be returned to the home of the parents as evidenced by an order from a court of competent jurisdiction terminating parents rights or its equivalent; and (3-29-10)

b. The child has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on ~~known information regarding the birth family and child's history;~~ the child's experience of documented physical, emotional, or sexual abuse, or neglect; or ~~(3-18-99)()~~

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is ~~a member of a sibling group that must not be placed apart~~ being placed for adoption with at least one (1) sibling; and ~~(5-3-03)()~~

e. The State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. ~~(5-3-03)()~~

03. Determination of Eligibility for State Funded Adoption Assistance. Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. (3-30-07)

04. Interjurisdictional Adoptions. When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E adoption assistance benefits. (3-30-07)

05. International Adoptions and Adoption Assistance. A child who meets the criteria for special needs under Subsection 900.02 of this rule, who is not a citizen or resident of the United States, and who was adopted outside of the United States or was brought into the United States for the purpose of being adopted, is not eligible to receive adoption assistance. This restriction does not prohibit adoption assistance payments for a child described in this Subsection who is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the adoptive parents. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

910. TYPES AND AMOUNTS OF ASSISTANCE.

The needs of the child and the family, including any other children in the family, will be considered in determining the amount and type of support to be provided. Assistance may include the following: (3-30-07)

01. Nonrecurring Adoption Reimbursement. Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits. (3-29-10)

02. Monthly Cash Payment. Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances and what additional resources are needed to incorporate the child into the adoptive family. The amount must not exceed the rate for family foster care found in Subsections 483 and 484 of these rules, which would be made if the child were in a family foster home in Idaho. Payments received for treatment foster care, gifts, clothing, and school fees are not considered part of the family foster care rate. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk

becomes evident. For children who are currently eligible for Personal Care Services (PCS), the *professional treatment* foster care rate **of up to a maximum of one thousand dollars (\$1,000) per month** may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. Benefits will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need.

~~(3-30-07)~~()

03. Title XIX -- Medicaid Coverage. Any child with special needs who has an adoption assistance agreement in effect is also eligible for medical coverage. A Title IV-E adoption assistance agreement provides Medicaid coverage in the state of Idaho and in all other states. Under a state-funded adoption assistance agreement, a child living in Idaho is eligible for Medicaid. If the family moves to another state, Medicaid may or may not be available. If Medicaid is not available in the new state, provisions for medical coverage must be contained in the adoption assistance agreement or in an amendment to the agreement. Families enrolled in a group health plan who plan to request to use Medicaid as the child's primary health care coverage must apply to the Idaho Health Insurance Premium Payment (HIP) program at the time of benefit negotiation. Medicaid provides secondary coverage after the family's health insurance has reached its benefit limit. All services reimbursed by Medicaid must be determined to be medically necessary. Prior authorization may be required for some Medicaid reimbursable services. Medicaid benefits are available until the child reaches the age of eighteen (18), based upon an annual determination of continuing need.

(3-30-07)

04. Title XX -- Social Services. Any child with special needs who has an Adoption Assistance Agreement is also eligible for state-authorized Title XX - Federal Social Services Block Grant funded services.

(3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is **July 1, 2010**. This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005, Idaho Code.

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

The Department has amended these rules to reflect the current statutory definitions for the following terms: daycare center, group daycare, and family daycare. Also, the term daycare facility has been deleted from this chapter of rules.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, pages 47 through 79](#).

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

The Department estimates the anticipated cost for SFY 2011 is \$69,000. This cost will be covered by the Federal Child Care Development Funds which is 100 percent federally funded.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Marian Woods at (208) 334-0683.

DATED this 12th day of November, 2010.

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

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of these temporary rules is **July 1, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 21, 2010.

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

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

Title 39, Chapter 11, Idaho Code, was amended to provide a statewide system for the protection of children in daycare facilities. The statutory changes were effective on January 1, 2010, and necessitate corresponding changes and clarification in this chapter of rules. The Department presented rules to the 2010 Legislature that were rejected. These rules are being published as temporary rules, in order to have rules effective on July 1, 2010, with changes to address concerns of the legislature.

These rule changes provide requirements and clarification for areas related to daycare licensing that include: safety and health standards, licensure requirements, suspension, denial, and revocation of licenses. While amending these child care licensing rules for daycare standards, other updates were made for consistency in language, clarification, deletion of obsolete language, and updating references. These amendments will help assure standards and processes to better protect the health and safety of children in child care licensed by the Department.

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

These temporary rules are necessary to protect the public health, safety, and welfare of children in child care and daycare, and to comply with amendments to statutes effective January 1, 2010.

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

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

The Department estimates the anticipated cost for SFY 2011 is \$69,000. This cost will be covered by the Federal Child Care Development Funds which is 100 percent federally funded.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted this year, 2010, because extensive rulemaking negotiations were held in 2009 under Docket No. 16-0602-0901, to meet new statutory requirements effective January 1, 2010.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Landis Rossi (208) 334-5688.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this 27th day of May, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0602-1001

000. LEGAL AUTHORITY.

Under Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code, the Idaho Legislature authorizes the Department of Health and Welfare and

~~the~~ Board of Health and Welfare to adopt and enforce rules governing standards and procedures for licensureing or certification of daycare centers, group daycare facilities, family daycare homes, foster homes, children’s agencies, and children’s residential care facilities, children’s camps, and children’s therapeutic outdoor programs which are maintained or operated within Idaho. (7-1-09)()

001. TITLE, SCOPE, ~~AND~~ POLICY, PURPOSE, EXCEPTIONS, AND EXEMPTIONS TO LICENSING.

01. Title. The title of this chapter of rules is IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing.” (7-1-09)

02. Scope. These rules establish minimum standards and procedures for ~~the~~ licensureing, or certification of maintaining, and operating the following facilities or programs within Idaho: ()

- a.** Daycare centers; ()
- b.** Group daycare facilities; ()
- c.** Family daycare homes, voluntarily; ()
- d.** ~~f~~Foster homes; ()
- e.** ~~e~~Children’s agencies, and; ()
- f.** ~~e~~Children’s residential care facilities, including non-accredited residential schools; ()
- g.** ~~e~~Children’s camps providing child care in Idaho. These standards apply for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period; ()
- h.** ~~e~~Children's therapeutic outdoor programs; ()
- i.** ~~a~~Alcohol-drug abuse treatment facilities for adolescents certified according to IDAPA 16.07.20, “Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs”; and ()
- j.** ~~f~~facilities specializing in maternity care to for minors, daycare centers and group daycare facilities. Also included are standards and procedures for voluntary compliance for licensing of group daycare facilities and family daycare homes. (7-1-09)()

03. Policy. It is the policy of the Department to assure that children of this state receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is based on the fact that children are vulnerable and not capable of protecting themselves. When parents, for any reason have relinquished their children’s care to others, there arises the possibility of certain risks to

those children's lives, health and safety which the community as a whole must protect against. This requires the offsetting statutory protection of review and, in certain instances, licensing or registration. (7-1-09)

04. Purpose. The Department issues a license to assure, as is reasonably practicable, that the care, services, and physical surroundings of each program or facility are in substantial compliance with these rules and minimum standards. ()

a. According to Section 39-1117, Idaho Code, a daycare license does not constitute a representation affirming to any person that the program or facility is free from risk. A daycare license does not guarantee adequacy of care, services, safety, or the well-being of any child, staff, contractor, volunteer, or visitor of a daycare facility. It is the parent's primary responsibility for evaluation and selection of daycare services. ()

b. The state, its employees or agents of the state or its political subdivisions, will not be liable for nor will a cause of action exist for any loss or damage based upon the failure of any daycare facility to meet the minimum standards contained in these rules. ()

05. Exceptions and Exemptions to Daycare Licensing. Under Section 39-1103, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: ()

a. Daycare facilities regulated, licensed, or certified by a city or county in accordance with local options under Section 39-1108, Idaho Code; ()

b. The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily in the business of providing daycare; ()

c. The operation of a private school or religious school for educational purposes for children over four (4) years of age, or a religious kindergarten; ()

d. The provision of occasional care exclusively for children of parents who are simultaneously in the same building; ()

e. The operation of day camps, programs and religious schools for less than twelve (12) weeks during a calendar year or not more often than once a week; or ()

f. The provision of care for children of a family within the second degree of relationship as defined in Section 011 of these rules. ()

06. Exceptions and Exemptions to Child Care Licensing. Under Sections 39-1206, 39-1213(b), and 39-1211, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: ()

a. Foster homes that have been approved by a licensed children's agency provided the standards for approval by such agency are no less restrictive than the rules and standards established by the Board and that such agency is maintained, operated, and conforms with these rules and standards; ()

b. The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily engaged in child care; or ()

c. Children's camps which only provide child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period. A children's camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children's residential care facility and is subject to the minimum standards and licensing requirements in these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -
- WEBSITE.**

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-11-06)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-11-06)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-11-06)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-11-06)

05. Internet Website. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (4-11-06)

06. Child Care Licensing Authority Location. The Department's child care licensing authority for children's residential treatment facilities, children's agencies, and children's outdoor therapeutic programs is located at 450 West State Street, Boise, Idaho 83702; Phone (208) 334-5700. ~~(7-1-09)~~()

07. Daycare Licensing Authority Location. The Department's daycare licensing authority for daycare centers, group daycare facilities, and family daycare homes is located at 450 West State Street, Boise, Idaho 83702; Phone (208) 334-5700. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-11-06)

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (4-11-06)

03. Licensure or Deficiencies Records. Under Section 9-340C(9), Idaho Code, and IDAPA 16.05.01, "Use and Disclosure of Department Records," information referring or relating to individuals, programs, or facilities subject to this chapter of rules, IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," will be released to the public upon written request if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission or position. These records will otherwise be provided in redacted form as required by law or rule. ()

007. -- 008. (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for ~~providers~~ **individuals** who are licensed ~~or certified~~ under these rules. ~~Providers~~ **Individuals** who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks," with the exception of those individuals described in Subsection 009.04 of ~~these~~ **this** rules. (~~3-30-07~~)()

02. When ~~Certification or~~ License is Granted. The applicant must have a completed criminal history and background check, including clearance, prior to ~~certification or~~ licensure. Any other adult living in the home must complete a ~~self-declaration form~~ **criminal history application**, must be fingerprinted, and must not have any ~~designated~~ **disqualifying** crimes listed in IDAPA 16.05.06, "Criminal History and Background Checks." (~~3-30-07~~)()

03. ~~Applicants and Providers~~ **Individuals Subject to Criminal History Check Requirements.** The following ~~applicants and providers~~ **individuals** must receive a criminal history and background check **clearance prior to licensure**: (~~3-30-07~~)()

a. Adoptive Parents. The criminal history and background check requirements applicable to adoptive parents are found in Subsection 671.02 of these rules. (3-30-07)

b. Child Care Facility Staff. The criminal history and background check requirements applicable to a child care facility are found in Section 109 of these rules. (3-30-07)

c. Children's Agency Facility Staff. The criminal history and background check requirements for a children's agency facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. (3-30-07)

d. Children's Residential Care Facility and Children's Camp Staff. The criminal history and background check requirements for a children's residential care facility or children's camp are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. (~~3-30-07~~)()

e. Children's Therapeutic Outdoor Program Staff. The criminal history and background check requirements for a children's therapeutic outdoor program are found in Section 810 of these rules and in Section 39-1208(8), Idaho Code. (3-30-07)

f. Daycare Center, Group Daycare Facility, Staff and Family Day Care Home. The criminal history and background check requirements applicable to licensed a daycare providers center, group daycare facility, and family daycare home are found in Section ~~1309~~ 309 of these rules and in Sections 39-1105, 39-1113, and 39-1114, Idaho Code. (~~3-30-07~~)()

g. Licensed Foster Care Home. The criminal history and background check requirements applicable to licensed foster care are found in Section 404 of these rules and in Section 39-1211(4), Idaho Code. (3-30-07)

04. Exceptions to Criminal History and Background Checks for Certain Youths. Criminal history and background checks are optional for certain youth placed in licensed foster homes and licensed residential care facilities. (~~3-30-07~~)()

a. Youth in foster care who reach the age of eighteen (18) and continue to reside in the same licensed foster home. (3-30-07)

b. Youth in a children's residential care facility who reach the age of eighteen (18) and continue to live in the same licensed residential facility. (3-30-07)

05. Criminal History and Background Check at Any Time. The Department can require a criminal history and background check at any time on any individual who: ()

a. ~~Is a permanent~~ resident of or an adult living in a licensed foster home ~~or~~: ()

b. Is a resident or adult living in, employee, contractor, volunteer, or staff member of a licensed residential facility; or (~~3-30-07~~)()

c. Is an owner, operator, or staff of a daycare center, group daycare facility, family daycare home, and all other individuals who are thirteen (13) years of age or older who have unsupervised direct contact with children or who are regularly on the premises. ()

010. DEFINITIONS A THROUGH M.

For the purposes of these rules, the following terms apply. (7-1-09)

01. Accredited Residential School. A residential school for any number of children subject to the jurisdiction of the Idaho Department of Education that has been certified as accredited according to the accrediting standards promulgated by the Idaho State Board of Education or a secular or religious accrediting association recognized by the Idaho Department of Education. (3-30-01)

02. Alcohol-Drug Abuse Treatment Facility. A children's residential care facility specializing in providing programs of treatment for children whose primary problem is alcohol or drug abuse, certified according to IDAPA 16.07.20, "Alcohol and Substance Use Disorders

Treatment and Recovery Support Services Facilities and Programs.” ~~(3-30-01)~~()

03. Attendance. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “attendance” means the number of children present at a daycare facility at any given time. ()

034. Board. The Idaho State Board of Health and Welfare. (3-30-01)

045. Chief Administrator. The duly authorized representative of an organization responsible for day-to-day operations, management and compliance with these rules and Title 39, Chapter 12, Idaho Code. (7-1-09)

056. Child. ()

a. For requirements of Title 39, Chapter 12, Idaho Code, and Sections 400 through 999 of these rules, “child” means ~~A~~an individual less than eighteen (18) years of age, synonymous with juvenile or minor. ~~(3-30-01)~~()

b. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “child” means an individual less than thirteen (13) years of age. ()

067. Child Care. The care, control, supervision or maintenance of children for twenty-four (24) hours a day which is provided as an alternative to parental care. (3-30-01)

08. Child-Staff Ratio. “Child-staff ratio” means the maximum number of children allowed under the care and supervision of one (1) staff person. ()

079. Children's Agency. A person who operates a business for the placement of children in foster homes, children's residential care facilities or for adoption in a permanent home and who does not provide child care as part of that business. A children’s agency does not include a licensed attorney or physician assisting or providing natural and adoptive parents with legal services or medical services necessary to initiate and complete adoptive placements. (3-30-01)

0810. Children's Camp. A program of child care at a location away from the child’s home, which is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy or rehabilitation for the child. A children’s camp which only provides child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period is exempt from the licensure and disclosure provisions of this chapter. A children’s camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children’s residential care facility. (7-1-09)

0911. Children's Institution. A person defined herein, who operates a residential facility for unrelated children, for the purpose of providing child care. Children’s institutions include foster homes, children's residential care facilities, maternity homes, or any residential facility providing treatment, therapy or rehabilitation for children, or any children's therapeutic outdoor program. (5-3-03)

102. Children's Residential Care Facility. A facility that provides residential child care, excluding foster homes, residential schools, juvenile detention centers and children's camps that: (3-30-01)

a. Seeks, receives or enrolls children for treatment of special needs such as substance abuse, mental illness, emotional disturbance, developmental disability, mental retardation, or children who have been identified by the judicial system as requiring treatment, therapy, rehabilitation or supervision; (3-30-01)

b. Receives payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; or (3-30-01)

c. Represents to the payor of the child care services provided by the children's facility that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services; and (5-3-03)

d. May include a children's therapeutic outdoor program whether or not that program operates out of a standard facility. (5-3-03)

113. Children's Therapeutic Outdoor Program. A program which is designed to provide behavioral, substance abuse, or mental health services to minors in an outdoor setting and serves either adjudicated or non-adjudicated youth. Children's Therapeutic Outdoor programs do not include outdoor programs for minors that are primarily designed to be educational or recreational that may include Boy Scouts, Girl Scouts, 4-H and other youth organizations. (5-3-03)

124. Continued Care. The ongoing placement of an individual in a foster home, children's residential care facility, children's therapeutic outdoor program, or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years of age. (7-1-09)

135. Contraband. Goods or merchandise, the possession of which is prohibited, such as weapons and drugs. (3-30-01)

146. Daycare. The care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood, ~~or~~ marriage, adoption, or legal guardianship to the person or persons providing the care, in a place other than the child's or children's own home or homes. (~~3-30-01~~)()

157. Daycare Center. A place or facility providing daycare for compensation for thirteen (13) or more children. (~~3-30-01~~)()

168. Department. The Idaho Department of Health and Welfare ~~or its designee~~. (~~7-1-09~~)()

179. Direct Care Staff. An employee who has direct personal interaction with children in the provision of child care and is included as staff in meeting the minimum staff-child ratio

requirements. (3-30-01)

~~1820~~. **Director.** Director of the Idaho Department of Health and Welfare or designee. (3-30-01)

~~1921~~. **Family Daycare Home.** A home, place, or facility providing daycare ~~for~~ six (6) or fewer children ~~during part of a twenty-four (24) hour day.~~ (3-30-01)()

~~202~~. **Foster Care.** The twenty-four (24) hour substitute parental care of children by persons who may or may not be related to a child. (7-1-09)

~~213~~. **Foster Home.** The private home of an individual or family licensed or approved as meeting the standards for foster care and providing twenty-four (24) hour substitute parental care to six (6) or fewer children. (7-1-09)

~~224~~. **Foster Parent.** A person or persons residing in a private home under their direct control to whom a foster care license ~~or certification~~ has been issued. (3-30-01)()

~~235~~. **Group Daycare Facility.** A home, place, or facility providing daycare ~~for~~ seven (7) to twelve (12) children. (3-30-01)()

~~246~~. **Inter-Country Adoption.** The placement of a child from one (1) country to another for the purpose of adoption. (3-30-01)

~~25~~. ~~**Licensing Authority.** The Department's child care licensing unit responsible for licensure or certification of Children's Residential Treatment Facilities, Children's Agencies, and Children's Outdoor Therapeutic Program.~~ (7-1-09)

~~267~~. **Mechanical Restraint.** Devices used to control the range and motion of an individual, including handcuffs, restraint boards, restraint chairs, and restraint jackets. (3-30-01)

~~278~~. **Medical Professionals.** Persons who have received a degree in nursing or medicine and registered nurse, nurse practitioner, physician's assistant and medical doctor. (3-30-01)

~~289~~. **Member of the Household.** Any person, other than a foster child, who resides in, or on the property of, a foster home. (3-30-01)

011. DEFINITIONS N THROUGH Z.

For the purposes of these rules, the following terms apply. (7-1-09)

01. Nonaccredited Residential School. A residential school for any number of children that is not certified or accredited pursuant to Section 39-1207, Idaho Code, or has lost accreditation and is subject to the jurisdiction of the Department as a children's residential care facility pursuant to Section 39-1210, Idaho Code, unless and until accreditation is certified by the Idaho Department of Education. (3-30-01)

02. Non-Compliance. Violation of, or inability to meet the requirements of, the act or

a rule promulgated under the act, or terms of licensure. (3-30-01)

03. Operator. An individual who operates or maintains within Idaho a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, or children's camp. ()

034. Organization. A children's agency or a children's residential care facility. (3-30-01)

045. Person. Any individual, group of individuals, associations, partnerships or corporations. (3-30-01)

056. Physical Intervention. Physical restraint utilized to control the range and motion of an individual. (3-30-01)

067. Placement. The activities and arrangements related to finding a suitable licensed home or facility in which a child will reside for purposes of care, treatment, adoption, or other services. (3-30-01)

078. Plan of Correction. The detailed procedures and activities developed between the licensing authority and caregiver required to bring a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster family, children's residential care facility, ~~or~~ children's agency, children's therapeutic outdoor program, or children's camp into conformity with these licensing rules. ~~(3-30-01)~~()

09. Regularly on the Premises. For the purposes of Sections 009 and 309 of these rules, regularly on the premises means twelve (12) hours or more in any one (1) month, or daily during any hours of operation. ()

0810. Relative. ~~Individuals related to a child by blood, marriage or adoption~~ Under Section 39-1202, Idaho Code, "relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling, and half-sibling. ~~(3-30-01)~~()

0911. Representative. An employee of the Department of Health and Welfare. (3-30-01)

102. Residential School. A residential facility for any number of children which: (3-30-01)

a. Provides a planned, scheduled, regular, academic or vocational program for students in the elementary, middle or secondary grades as defined in Section 33-1001, Idaho Code; and (3-30-01)

b. Provides services substantially comparable to those provided in nonresidential public schools where the primary purpose is the education and academic pursuits of the students; and (3-30-01)

c. Does not seek, receive or enroll students for treatment of such special needs as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; and (3-30-01)

d. Does not receive payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability, or mental retardation; and (3-30-01)

e. Does not represent to the payor of child care services provided that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services. (3-30-01)

~~143.~~ **Restraint.** Interventions to control the range and motion of a child. (3-30-01)

~~124.~~ **Seclusion.** A room within a facility designed to temporarily isolate an individual in order to gain emotional or physical control by means of structure and minimal stimulation. (3-30-01)

15. Second Degree of Relationship. The second degree of relationship refers to persons related consanguineally (“blood relative”) and affinally (“relative by marriage”) and includes their spouses. The number of degrees between two (2) relatives is calculated by summing the number of ties between each relative and the common ancestor. ()

~~136.~~ **Secure.** A physically restrictive setting, as in a locked or guarded residential facility. (3-30-01)

~~147.~~ **Security Risk.** An individual who presents the possibility by actions, behavior or emotional reaction that may result in harm to self or others, or escape from physical control. (3-30-01)

~~158.~~ **Service Worker.** An employee of an organization who has obtained at a minimum, a Bachelor’s degree in a behavioral science, including social work, sociology, psychology, criminal justice, counseling, or a related field, whose duties may include assessment, service planning, supervision and support. (7-1-09)

~~169.~~ **Shelter Care.** The temporary or emergency out-of-home care of children in a foster home or residential facility. (3-30-01)

~~1720.~~ **Social Worker.** An individual licensed by the state of Idaho in compliance with Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the State Board of Social Work Examiners.” (7-1-09)

~~1821.~~ **Soft Restraints.** Mechanical restraints made of leather, cloth or other combinations of fibers, utilized to control the range of motion of an individual. (3-30-01)

22. Staff. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “staff” means a person who is sixteen (16) years of age or older and employed by a daycare owner or operator to provide care and supervision at a daycare facility.

()

23. Supervision. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, supervision is defined as within sight and normal hearing range of the child or children being cared for. ()

1924. Time-Out. Separation of a child from group activity as a means of behavior management. (3-30-01)

205. Training. The preparation, instruction and education related to child care that increases the knowledge, skill and abilities of a foster parent, agency and residential care facility staff or volunteers. (3-30-01)

216. Transitional Living. Living arrangements and aftercare services for children, or as continued care, to gain experience living on their own in a supportive and supervised environment prior to emancipation. (3-30-01)

227. Variance. The means of complying with the intent and purpose of a child care licensing rule in a manner acceptable to the Department other than that specifically prescribed in the rule. (7-1-09)

238. Waiver. The non-application of a child care licensing rule, except those related to safety, extended to a relative foster home by the licensing authority which serves to promote child health, well-being, and permanence while not compromising safety. (7-1-09)

012. -- 099. (RESERVED).

LICENSING AND CERTIFICATION
(Sections 100 through 299)

100. LICENSING ~~AND CERTIFICATION.~~

The purpose of licensing ~~and certification~~ is to set minimum standards and to monitor compliance. Persons applying for licensure need to be physically and emotionally suited to protect the health, safety and well-being of the children in their care. Physical surroundings must present no hazards to the children in care. (7-1-09)()

~~**01. Local Option.** If a city or county, within its respective jurisdiction, has adopted and is enforcing ordinances for regulating or licensing of daycare services which are at least as stringent as those contained in Subsections 300.01 through 300.15 of these rules, then those provisions of Section 39-1108, Idaho Code, will not apply within such city or county, unless the ordinance is subsequently repealed or is no longer enforced. (7-1-09)~~

~~**02. Exemptions From Licensing.** Under Sections 39-1103 and 39-1211, Idaho Code, the occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily engaged in child care is exempt from licensure requirements for daycare and foster homes. Foster homes which have been certified by a licensed children's agency are exempt from licensure requirements, provided the standards for approval by such agency are at least as stringent as the rules and standards established by the Board and that such agency is~~

~~maintained and operated in conformity with the rules and standards of the Board under Section 39-1213(b), Idaho Code.~~ (7-1-09)

031. Responsibilities of the Foster Parent or Operator. A foster parent or operator must conform to the terms of the license ~~or certification.~~ *In addition:* (3-30-01)()

a02. Responsible for Knowledge of Standards. The foster parent or operator is responsible for knowing the standards and rules applying to the type of foster home, children's residential care facility, ~~or~~ children's agency, children's therapeutic outdoor program, children's camp, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, covered by the license ~~or certification,~~ and for conforming to them at all times; ~~and.~~ (3-30-01)()

b03. Responsible for Agency Staff Knowledge. The operators ~~s~~ of a child care facilities ~~y and or~~ agencies ~~y are~~ is responsible for ensuring that all staff members are familiar with the applicable rules governing the children's residential care facility, children's therapeutic outdoor program, ~~or~~ children's agency, children's camp, daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department. A copy of these rules is available from the Office of the Administrative Rules Coordinator, 650 W. State Street, Boise ID 83720, or on the Office of the Administrative Rules Coordinator's website, <http://adm.idaho.gov/adminrules/>; ~~and.~~ (7-1-09)()

e04. Return of License. The foster parent or operator must immediately return his license ~~or certification~~ to the Department under any of the following circumstances: (3-30-01)()

ia. Changes of management or address; ~~or~~ (3-30-01)()

ib. Upon suspension or revocation of the license ~~or certification~~ by the Department; (3-30-01)()

or

iiic. Upon voluntary discontinuation of service. (3-30-01)

101. APPLICATIONS FOR LICENSE ~~OR CERTIFICATION.~~

~~An~~ Applications for a license ~~or certification are to~~ must be submitted ~~and action is to be initiated on all applications within thirty (30) days after receipt, that addresses each requirement for the particular type of home, facility or agency to the Department.~~ Licensing ~~and certification~~ studies will follow the format of these rules and will contain a specific recommendation regarding the terms of the license ~~or certification.~~ All foster homes, children's agencies, children's therapeutic outdoor programs, children's camps, daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, and children's residential care facilities must also comply with applicable Idaho city and county ordinances. (7-1-09)()

~~01. Sanitation Inspection. The applicant must request and obtain a sanitation inspection and written report from the applicable Idaho Public Health District.~~ (7-1-09)

~~02. Fire Inspection. The applicant must request and obtain a fire safety inspection and written report from the office of the Idaho State Fire Marshall or local fire department.~~ (7-1-09)

~~03. **Corrective Action and Fees.** The applicant must correct all deficiencies noted in the sanitation and fire reports, in order to provide documentation that the applicant has passed the inspections, and is responsible to pay any fees charged. (7-1-09)~~

~~04. **Planning and Zoning.** The applicant must provide documentation demonstrating it meets planning and zoning requirements of the applicable Idaho city or county. (7-1-09)~~

102. DISPOSITION OF APPLICATIONS.

The Department will initiate action on each completed application within thirty (30) days after receipt that addresses each requirement for the specific type of home, facility, or agency. Upon receipt of a completed application and study, the licensing authority will review the materials for conformity with these rules. (7-1-09)()

01. Approval of Application. A license ~~or certification~~ will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these rules governing the home or facility. The license ~~or certification~~ is issued according to the terms specified in the licensing ~~or certification~~ study and will be mailed to the applicant. (7-1-09)()

02. Regular License. A regular license ~~or certification~~ will be issued to any daycare ~~or center~~, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these rules governing the facility and will specify the terms of licensure ~~or certification~~, such as: (7-1-09)()

- a. Full time or daycare; (3-30-01)
- b. The number of children who may receive care at any one (1) time; and (3-30-01)
- c. Age range and gender, if there are conditions in the foster home or children's residential care facility making such limitations necessary; (3-30-01)

d. The regular license ~~or certification~~ for a foster homes, children's agencies, and twenty-four (24) hour a day child care children's residential care facilities, will be children's therapeutic outdoor program, or children's camp is in effect for one (1) year from the date of issuance unless suspended or revoked earlier; (7-1-09)()

e. A regular license ~~or certification~~ for a daycare and center, group daycare facility, or family daycare home voluntarily licensed by the Department is in effect for two (2) years from the date of issuance unless suspended or revoked earlier; and (7-1-09)()

f. If the license for a foster home is for a specific child only, the name of that child will be shown on the foster home license. (3-30-01)

03. Waiver. A regular license ~~or certification~~ may be issued to the foster home of a relative who has received a waiver of licensing rules provided: (7-1-09)()

- a. The waiver is considered on an individual case basis; (3-30-01)
- b. The waiver is approved only for non-safety foster care rules; (7-1-09)
- c. All other licensing ~~or certification~~ requirements have been met; ~~(3-30-01)~~()
- d. The approval of a waiver of any foster home rules requires the licensing authority to document a description of the reasons for issuing a waiver, the rules being waived, and assurance that the waiver will not compromise the child's safety; and (7-1-09)
- e. The approved waiver must be reviewed for continued need and approval at regular intervals not to exceed six (6) months. (7-1-09)

04. Variance. A regular license ~~or certification~~ will be issued to a foster home, children's residential care facility or children's agency approved for a variance of a licensing rule provided: ~~(3-30-01)~~()

- a. The variance is considered on an individual case basis; (3-30-01)
- b. The variance is approved for a non-safety licensing rules; (3-30-01)
- c. The approval of a variance must have no adverse effect on the health, safety, and well-being of any child in care at the foster home or facility; (7-1-09)
- d. The approval of a variance is documented by the licensing agency and includes a description of the reasons for issuing a variance and assurances that the variance will not compromise any child's health, safety, and well-being; and (7-1-09)
- e. The approved variance must be reviewed for continued need and approval annually. (7-1-09)

05. Provisional License ~~or Certification~~. A provisional license ~~or certification~~ may be issued to a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency when a licensing standard cannot be met but can be expected to be corrected within six (6) months, provided this does not affect the health, safety and well-being of any child in care at the home or facility. ~~(3-30-01)~~()

- a. A provisional license ~~or certification~~ will be in effect for not more than six (6) months. ~~(3-30-01)~~()
- b. Only one (1) provisional license ~~or certification~~ will be issued to a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, ~~or~~ children's residential care facility, children's agency, ~~or a~~ children's therapeutic outdoor program, or children's camp in any twelve-month period of time under Sections 39-1216, ~~Idaho Code,~~ and for daycare facilities defined in Section 39-1102, Idaho Code. ~~(7-1-09)~~()

06. Limited License. A limited license for a foster home may be issued for the care of a specific child in a home which may not meet the requirements for a license, provided that: (3-30-01)

a. The child is already in the home and has formed strong emotional ties with the foster parents; and (3-30-01)

b. It can be shown that the child's continued placement in the home would be more conducive to their welfare than would removal to another home. (3-30-01)

07. Denial of Application. In the event that an application is denied, a signed letter will be sent directly to the applicant by registered or certified mail, advising the applicant of the denial and stating the basis for such denial. An applicant whose application has been denied may not reapply until after one (1) year has elapsed from the date on the denial of application. (7-1-09)()

08. Failure to Complete Application Process. (7-1-09)

a. Failure of the applicant to complete the application process within six (6) months of the original date of application will result in a denial of the application. (7-1-09)

b. An applicant whose application has been denied for being incomplete may not reapply until after one (1) year has elapsed from the date on the denial of application. (7-1-09)

103. RESTRICTIONS ON APPLICABILITY AND NONTRANSFER.

01. Issued License. A ~~child-care~~ license ~~or certification~~ applies only to the foster home, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or the person and premises designated. Each license is issued in the name of the individual, firm, partnership, association, corporation, or governmental unit identified on the application and only to a specified address of the facility or program stated in the application for the period and services specified. A license issued in the name of a foster parent, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's agency applies only to the services specified in the license ~~or certification~~. Any change in management or address renders the license ~~or certification~~ null and void, and the foster parent or operator must immediately return the license ~~or certification~~ to the licensing agency as required in Section 100 of these rules. (3-30-01)()

02. Nontransferable. A license is nontransferable or assignable from one (1) individual to another, from one (1) business entity or governmental unit to another, or from one (1) location to another. ()

03. Change in Ownership, Operator, or Location. When there is a change in ownership, operator, or a change in location occurs, the facility or program must reapply for a license as required in Section 101 of these rules. The new owner or operator must obtain a license before starting operations. ()

(BREAK IN CONTINUITY OF SECTIONS)

105. REVISIT, AND RELICENSE ~~AND RECERTIFICATION~~.

Revisit, and relicense, ~~and re-certification~~ studies will document how the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency continues to meet the standards for licensing. Consideration must be given to each point of the standards, including a review of the previous study and original application to determine what changes have occurred. An application for renewal of a license ~~or certification~~ must be made by the operator on the form furnished by the Department, and filled out prior to the expiration date of the license ~~or certification~~ currently in force. When such application for renewal has been made in the proper manner and form, the existing license ~~or certification~~ will, unless officially revoked, remain in force until the Department has acted on the application for renewal. (7-1-09)()

106. COMPLAINTS AGAINST DAYCARE CENTERS, GROUP DAYCARE FACILITIES, FAMILY DAYCARE HOMES, FOSTER HOMES, CHILDREN'S RESIDENTIAL CARE FACILITIES, CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS, CHILDREN'S CAMPS, AND CHILDREN'S AGENCIES.

01. Investigation. The Department will investigate complaints regarding daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, foster homes, children's residential care facilities, children's therapeutic outdoor programs, children's camps, or children's agencies. The investigation may include further contact with the complainant, scheduled or unannounced visits to the children's residential care facility, foster home, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's agency, collateral contacts including interviews with the victim, parents or guardian, children's residential care facility or children's agency administrator, operator, staff, consultants, children in care, other persons who may have knowledge of the complaint, and inspections by fire or health officials. ()

02. Informed of Action. If an initial preliminary investigation indicates that a more complete investigation must be made, the foster parents, operator, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency will be informed of the investigation, and any action to be taken, including referral for civil or criminal action. (7-1-09)()

107. SUSPENSION FOR CIRCUMSTANCES BEYOND CONTROL OF FOSTER PARENT OR OPERATOR.

When circumstances occur over which the foster parent or operator has no control including illness, epidemics, fire, flood, or contamination, which temporarily place the operation of the foster home, child care facility, daycare center, group daycare facility, family daycare home

voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency out of conformity with Idaho law or with these rules, the license ~~or certification~~ must be suspended until the nonconformity is remedied.

(7-1-09)()

108. SUSPENSION OR REVOCATION FOR INFRACTIONS.

A license ~~or certification~~ may be suspended for infractions of these rules. Such suspension may lead to revocation if the foster parent or operator fails to satisfy the Director that the infractions have been corrected sufficiently to assure conformity with the rules.

(7-1-09)()

109. NON-RENEWAL, DENIAL, REVOCATION, OR SUSPENSION OF LICENSE ~~OR CERTIFICATION~~.

If, upon investigation, it is found that an applicant, foster parent, or operator has failed or refused to comply with any of the provisions of the Basic Daycare License Law, Sections 39-1101 through 39-11720, Idaho Code, or the Child Care Licensing Reform Act, Sections 39-12081 through 39-1224, Idaho Code, or with these rules, or with any provision of the license ~~or certification~~, the Director may deny, suspend, revoke, or not renew a license ~~or certification~~. The Department may also deny, suspend, revoke, or ~~not renew~~ deny renewal of a license ~~or certification~~ for any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, child care facility, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or foster home when any of the following in Subsection 109.01 and 109.02 of this rule is determined:

(7-1-09)()

01. Criminal Conviction or Relevant Record. Anyone providing direct care or working onsite under these rules is denied clearance or refuses to comply with the requirements in IDAPA 16.05.06, "Criminal History and Background Checks."

(7-1-09)()

02. Other Misconduct. The applicant, foster parent, operator, or the person proposed as chief executive officer ~~except for daycare facilities~~:

(3-30-01)()

a. Fails to furnish any data, statistics, records or information requested by the Department without good cause or provides false information;

(3-30-01)

b. Has been found guilty of or is under investigation for fraud, deceit, misrepresentation or dishonesty associated with the operation of a children's residential care facility or children's agency;

(3-30-01)

c. Has been found guilty of or is under investigation for the commission of any felony;

(3-30-01)

d. Has failed to exercise fiscal accountability toward a client or the Department regarding payment for services; or

(3-30-01)

e. Has knowingly permitted, aided or abetted the commission of any illegal act on the premises of the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency.

(7-1-09)()

(BREAK IN CONTINUITY OF SECTIONS)

111. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENTS OR CHILDREN.

The Department may summarily suspend a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's agency, children's therapeutic outdoor program, children's camp, or a children's residential care facility license and require the program to transfer residents or children when the Department has determined a resident's or child's health and safety are in immediate jeopardy. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the facility, instead the parent or legal guardian will be contacted.

(7-1-09)()

112. ENFORCEMENT REMEDY REVOCATION OF LICENSE AND TRANSFER OF RESIDENTS OR CHILDREN.

The Department may revoke the license of a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's agency, children's therapeutic outdoor program, or children's residential care facility when the Department determines the provider operator is not in compliance with these rules. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, will not be transported from the facility, instead the parent or legal guardian will be contacted. Revocation and transfer of residents or children may occur under the following circumstances:;

(7-1-09)()

01. Endangers Health or Safety. Any condition that endangers the health or safety of any resident or child.

(7-1-09)()

02. Not in Substantial Compliance. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility is not in substantial compliance with these rules.

(7-1-09)()

03. No Progress to Meet Plan of Correction. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted a plan of correction.

(7-1-09)()

04. Repeat Violations. Repeat violations of any requirement of these rules or provisions of Title 39, Chapters 11 and 12, Idaho Code.

(7-1-09)()

05. Misrepresented or Omitted Information. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has knowingly misrepresented or omitted information on the application or other

documents pertinent to obtaining a certificate license. (7-1-09)()

06. Refusal to Allow Access. Refusal to allow Department representatives full access to the foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility and its grounds facilities and records. (7-1-09)()

07. Violation of Terms of Provisional License. A children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility that has violated any of the terms or conditions of a provisional license. (7-1-09)()

(BREAK IN CONTINUITY OF SECTIONS)

300. STANDARDS FOR DAYCARE.

01. Purpose. ~~The stated legislative purpose of Sections 39-1101 through 39-1117, Idaho Code, is to provide for minimum statewide daycare licensing for children less than twelve (12) years of age. Persons with certain criminal backgrounds are prohibited from working in daycare centers. Responsibilities for regulatory authority are divided between the Board, the state fire marshal, and the public health districts. As stated in Section 39-1101, Idaho Code: "It is declared to be the policy of the state to establish a minimum statewide system for the protection of children in daycare centers. This system is intended to establish minimum standards, while still leaving primary responsibility for evaluation and selection of daycare services with parents. The minimum standards established by this chapter are not to be construed as preempting more stringent regulation by county or city ordinance."~~ Daycare Standards. In addition to meeting the rules and minimum standards required in Sections 000 through 199 of these rules, each owner, operator, or applicant seeking licensure from the Department as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must also meet the requirements under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules. (4-9-09)()

02. Fee Charged. ~~Fees are charged at the time of initial application for a basic daycare license or certification. The fees will be used to cover the expenses for fire inspections, health inspections and criminal history and background checks. The initial inspection fees are non-refundable. Basic daycare licenses and certifications are valid for a period of two (2) years.~~ Minimum Age of Applicant. An individual, submitting an application to the Department to be licensed for a daycare center, group daycare facility, or family daycare home, must be a minimum of eighteen (18) years of age. (4-9-09)()

a: ~~Fees will also be charged at the time of application for renewal of a license or certification. An application for renewal must be filed every two (2) years prior to the expiration of a current basic daycare license or certification in order for the current license or certification to remain valid, pending the completion of the appropriate inspections. Application and inspection fees for renewal are non-refundable.~~ (4-9-09)

~~**b.** Fees for initial inspection and renewal of basic daycare licenses and certifications must be paid directly to the inspecting fire and health agencies. The criminal history check fees and application fee for renewal must be paid directly to the Department. (4-9-09)~~

~~**e.** The applicable license fee payable to the Department upon initial application or a renewal will be reduced for any daycare facility which provides evidence that at least fifty percent (50%) of its staff is certified in infant/child first aid and cardiopulmonary resuscitation. (4-9-09)~~

~~**i.** To receive such refund of monies paid to the Department for licensure or renewal, the applicant or owner/operator of such daycare facility must submit to the Department daycare licensing unit, at any time during the period of a valid license or certificate for daycare, written documentation of the number of staff in the daycare facility and that at least fifty percent (50%) of that staff is certified in infant/child first aid and cardiopulmonary resuscitation. (4-9-09)~~

~~**ii.** Upon receipt of valid documentation that fifty percent (50%) of the staff of that daycare facility is so certified, a payment equal to twenty-five percent (25%) of the licensing fee paid will be made to the applicant or owner/operator of such licensed daycare facility. (4-9-09)~~

~~**03. Initial Application Fees for Basic Daycare License.** All unlicensed and previously licensed daycare centers caring for thirteen (13) or more children are required to submit an initial application for a basic daycare license. The maximum fees for both unlicensed and previously licensed centers cannot exceed one hundred dollars (\$100) for a state license. (4-9-09)~~

~~**a.** The following fees will be included with the initial application for a basic daycare license: (3-30-01)~~

~~**i.** Health Inspection—thirty-five dollars (\$35) payable to the Health District; (3-30-01)~~

~~**ii.** Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; and (3-30-01)~~

~~**iii.** Criminal History Check—forty-five dollars (\$45) for the criminal history check will be charged for each licensing applicant and is separate from the application fees for health and fire inspections. The fees for criminal history checks are the responsibility of the individual or daycare center with which they are associated (4-9-09)~~

~~**b.** Posting of license in a conspicuous place at the daycare center is required. (3-30-01)~~

~~**e.** The Department obtains a criminal history check on only those applicants, owners, operators, employees or volunteers who have direct contact with the children in care and on all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. "Volunteers" when used in this chapter means only those persons who have direct unsupervised contact with children in care for more than twelve (12) hours in any one (1) month. (4-9-09)~~

~~**04. Application Fees for Renewal of Basic Daycare License.** A basic daycare license must be renewed every two (2) years. The application fee for renewal of a license cannot exceed sixty dollars (\$60). The following fees will be included with an application for renewal of a basic daycare license: (4-9-09)~~

~~**a.** Department—ten dollars (\$10) payable to the Department; (3-30-01)~~

~~**b.** Health Inspection—thirty dollars (\$30) payable to the Health District; and (3-30-01)~~

~~**c.** Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)~~

~~**d.** It will be the responsibility of the applicant, owner, or operator of a daycare center to ensure that a criminal history check is initiated within ten (10) days for staff having direct contact with children to include employees and volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (3-30-01)~~

~~**05. Initial Application Fees for Certification.** All unlicensed and previously licensed group daycare facilities caring for seven (7) to twelve (12) children are not required to be licensed but must be certified by obtaining a fire inspection and criminal history check for applicant and staff. (4-9-09)~~

~~**a.** The following fees shall be included with the initial application for a state certification: (3-30-01)~~

~~**i.** Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; (3-30-01)~~

~~**ii.** Criminal History Check—fifty five dollars (\$55) will be charged for each certification applicant, owner, operator, employee or volunteer at the group daycare facility requiring a criminal history check and is separate from the application fee for a fire inspection and is the responsibility of the individual or group daycare facility. (4-9-09)~~

~~**b.** The fire inspection certification and verification of the required criminal history check must be available for inspection on the premises. (4-9-09)~~

~~**c.** The Department obtains a criminal history check on only those applicants, owners, operators, employees, or volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (4-9-09)~~

~~**06. Application Fee for Renewal of Certification.** A certification must be renewed every two (2) years. The application fee for renewal of a certification will not exceed thirty dollars (\$30). The following fees will be included with the application for renewal of certification: (4-9-09)~~

~~**a.** Department—ten dollars (\$10) payable to the Department; and (3-30-01)~~

~~b. Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)~~

~~e. It will be the responsibility of the applicant, owner or operator of a group daycare facility to ensure that any employees and volunteers having direct contact with children have, upon employment or assignment, a criminal history check initiated within ten (10) days for staff. (3-30-01)~~

~~07. **Voluntary Compliance by Group Daycare Facilities for Basic Daycare License.** A group daycare facility may elect voluntarily to secure a basic daycare license and must meet the same requirements as for daycare centers. Group daycare facilities wishing to apply for a basic daycare license must comply in all cases with the requirements of a fire inspection, health inspection and criminal history check. Group daycare facilities electing to secure a basic daycare license will be charged the same fees as for daycare centers. (4-9-09)~~

~~08. **Family Daycare Homes.** Family daycare homes caring for six (6) or fewer children are not required to have a basic daycare license or certification. A family daycare home may, however, elect voluntarily to secure a basic daycare license and must meet the same requirements as for daycare centers. Family daycare homes wishing to apply for a basic daycare license must comply with the requirements of a fire inspection, health inspection and criminal history check, when required. Family daycare homes electing to secure a basic daycare license will be charged the same fees as for daycare centers. (4-9-09)~~

~~09. **Procedure for Criminal History Checks.** The Department is hereby authorized to obtain and submit criminal history checks with fingerprints on applicants, owners, operators, employees and volunteers of daycare centers, group daycare facilities and family daycare homes, when the home wishes to voluntarily comply with the requirements for a basic daycare license. The criminal history check is conducted under Sections 39-1113 and 56-1004A, Idaho Code, and IDAPA 16.05.06, "Criminal History and Background Checks." Criminal history checks are required on employees, volunteers, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. Basic daycare licenses, certifications and/or daycare provider permits will be used as a means of verifying that no record has been found under Sections 39-1113 and 39-1115(3), Idaho Code, on licensing and certification applicants, owners, operators, employees and volunteers requiring criminal history checks. (4-9-09)~~

~~10. **Temporary Basic Daycare Licenses, Certifications, and Daycare Provider Permits.** (3-30-01)~~

~~a. The Department may issue temporary basic daycare license, temporary certifications and temporary daycare provider permits to licensing or certification applicants pending the completion of the necessary daycare inspections or criminal history checks. The Department may also issue temporary daycare provider permits to daycare providers who are owners, operators, employees and volunteers pending the completion of the criminal history check. All temporary basic daycare licenses, temporary certifications and temporary daycare provider permits will be issued under the following conditions: (4-9-09)~~

~~i. Issued for a period not to exceed one hundred twenty (120) days, unless otherwise extended by the Department. (4-9-09)~~

~~ii. Applicants, owners, operators, employees and volunteers requiring a criminal history check properly completing and signing a notarized self-declaration certifying that they have never been found guilty of or received a withheld judgement for any of the crimes enumerated in Sections 39-1113 and 39-1115(3), Idaho Code, pending the completion of the criminal history check. (3-30-01)~~

~~iii. All temporary basic daycare licenses and certifications are conditional upon satisfactory daycare facility inspections and applicants' satisfactory criminal history checks. (3-30-01)~~

~~iv. All temporary daycare provider permits are conditional upon satisfactory criminal history checks. (3-30-01)~~

~~b. If a criminal history check on an applicant for licensing or certification or a currently licensed or certified daycare facility discloses an owner, operator, employee or volunteer with a guilty conviction or a withheld judgement under Sections 39-1113 and 39-1115(3), Idaho Code, the individual must be suspended immediately from continued employment or volunteering. The daycare facility and individual will be in violation of these rules and subject to a misdemeanor if the individual is retained after receiving notice by certified mail from the Department that the individual has been found guilty of or received a withheld judgement for an offense under Sections 39-1113 and 39-1115(3), Idaho Code. (4-9-09)~~

~~**11. Responsibilities of Applicants, Owners or Operators.** It is the responsibility of the applicant, owner or operator of a daycare facility to maintain a personnel record on each employee and volunteer at the daycare facility having direct contact with children. The personnel record must include date of initial employment or assignment, date of termination or extended leave from employment or assignment, a copy of the daycare provider permit and any other information which may be necessary to establish daycare facility and personnel compliance with Section 39-1105, Idaho Code. It is the responsibility of the applicant, owner or operator of a daycare facility to ensure new employees and volunteers having direct contact with children, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children, submit to the Department within ten (10) days from the date of initial employment or assigned self-declaration certifying they have not been found guilty of or received a withheld judgement for the crimes under Section 39-1115(3), Idaho Code. Two (2) fingerprint cards (FD-258) with fingerprints for personnel requiring criminal history checks must also be completed within ten (10) days from the date of initial employment or assignment. (4-9-09)~~

~~**12. Immunizations Required.** Under Section 39-1118, Idaho Code, the immunizations required and the manner and frequency of their administration are provided in IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." (4-9-09)~~

~~**13. Employee Training.** The owner operator of a daycare center must ensure through documentation that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's hire date. (4-9-09)~~

~~**14. Preemption.** These rules do not preempt more stringent local regulation or~~

~~requirements.~~

~~(3-30-01)~~

301. TYPES OF DAYCARE LICENSES.

Subject to meeting all requirements under Title 39, Chapter 11, Idaho Code, and the rules and minimum standards in this chapter, the Department will determine the type of daycare license required by an owner or operator providing daycare by counting each child in attendance, regardless of relationship to the person or persons providing the care. The following types of daycare licenses may be issued by the Department. ()

01. Daycare Center License. A daycare center license is issued for a place or facility providing daycare, where thirteen (13) or more children, regardless of relationship to the person or persons providing the care, are in attendance. ()

02. Group Daycare Facility. A group daycare facility license is issued for a place or facility providing daycare, where seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are in attendance. ()

03. Family Daycare Home. A family daycare home is not required to be licensed. However, a family daycare home may voluntarily elect to be licensed by the Department. ()

302. -- 308. (RESERVED).

309. CRIMINAL HISTORY AND BACKGROUND CHECK FOR DAYCARE STANDARDS.

01. Criminal History and Background Check for Daycare Centers and Group Daycare Facilities. Each owner, operator, or applicant seeking licensure for a daycare center, group daycare facility, or a family daycare home must submit evidence that is satisfactory to the Department that the following individuals have successfully completed and received a clearance for a Department criminal history and background check under the provisions of Sections 39-1105 and 39-1113, Idaho Code: ()

a. Owners, operators, and staff; ()

b. All other individuals thirteen (13) years of age or older who have unsupervised direct contact with children; or ()

c. All other individuals thirteen (13) years of age or older who are regularly on the premises. ()

02. Juvenile Justice Records. The criminal history and background check for any individual under eighteen (18) years of age, must include a check of the juvenile justice records, as authorized by the minor and his parent or guardian. Records must be checked for each jurisdiction in which the individual has resided since becoming thirteen (13) years of age through eighteen (18) years of age. Each owner, operator, or applicant is responsible for requesting a check of the juvenile justice record, paying for the costs of a check of the juvenile justice records, and submitting them to the Department for review. A check of the juvenile justice records must include the following: ()

a. Juvenile justice records of adjudication of the magistrate division of the district court; ()

b. County probation services; and ()

c. Department records. ()

03. Criminal History and Background Check for Family Daycare Homes. Under Section 39-1114, Idaho Code, any person providing daycare for four (4) or more children in a family daycare home is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. ()

04. Criminal History and Background Check for Private Schools and Private Kindergartens. Under Section 39-1105, Idaho Code, any person who owns, operates, or is employed by a private school for educational purposes for children four (4) through six (6) years of age or a private kindergarten is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. ()

05. Cost of Criminal History and Background Check and Juvenile Justice Records. Each individual who requests and obtains a Department criminal history and background check is responsible for the cost of the criminal history and background check and check of juvenile justice records. ()

06. On-going Duty to Report Convictions. Following completion of a criminal history and juvenile justice background check and clearance, additional criminal convictions and juvenile justice adjudications for disqualifying crimes under Section 39-1113, Idaho Code, must be self-disclosed by the individual to the owner or operator of a daycare center, group daycare facility, or family daycare home. The owner or operator must report these additional convictions and adjudications to the Department within five (5) days of learning of the conviction or adjudication. ()

310. -- 320. (RESERVED).

321. APPLICATION FOR DAYCARE LICENSE OR RENEWAL.

Any individual applying for licensure as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must be at least eighteen (18) years of age. The applicant must apply on forms provided by the Department and must provide information required by the Department set forth in the following Subsections 321.01 through 321.10. ()

01. Completed and Signed Application. A completed application form signed and dated by the applicant. ()

02. Licensing Fee. The applicant must pay the appropriate licensing fee prior to the issuance of a daycare license by the Department. ()

03. Inspection Reports. The following reports must be submitted to the Department with the application: ()

- a.** Proof that the proposed facility meets local building code, where required; ()
- b.** Proof that the proposed facility meets local electrical code, where required; ()
- c.** Proof that the proposed facility meets fire code, where required; and ()
- d.** Proof that the facility meets local planning and zoning requirements. ()
- 04.** **Proof of Insurance.** The applicant must provide proof of current fire and liability insurance coverage for the daycare facility. ()
- 05.** **Criminal History and Background Clearance.** Evidence that the applicant and all individuals required to have a criminal history and background check have received a clearance from the Department required in Section 309 of these rules. ()
- 06.** **Statement to Comply.** The applicant must provide a written statement that these rules have been thoroughly read and reviewed and the applicant is prepared to comply with all of its provisions. ()
- 07.** **Statement Disclosing Revocation or Disciplinary Actions.** A written statement that discloses any revocation or other disciplinary action taken or in the process of being taken against the applicant as a daycare provider in Idaho or any other jurisdiction, or a statement from the applicant stating he has never been involved in any such action. ()
- 08.** **Other Information as Requested.** The applicant must provide other information that may be requested by the Department for the proper administration and enforcement of the provisions of this chapter. ()
- 09.** **Additional Requirements for License Renewal.** A daycare license must be renewed every two (2) years. The daycare operator must submit to the Department the renewal application, fee, and all required documentation in this section of rule at least forty-five (45) days prior to the expiration of the current daycare license. ()
- 10.** **Termination of Application Process.** Failure of the applicant to cooperate with the Department in the application process may result in the termination of the application process. Failure to cooperate means that the information requested is not provided within ninety (90) days, or not provided in the form requested by the Department, or both. ()
- 321. -- 324.** **(RESERVED).**
- 325.** **ISSUANCE OF LICENSE.**
- 01.** **Department Action.** The Department will order a health and safety inspection of the daycare facility once the application for licensure is complete and the licensing fee has been paid. ()
- 02.** **Issuance of a Regular License.** If the Department determines the applicant is in

compliance with the rules and minimum standards set forth in these rules, the Department will, within sixty (60) days from the date the completed application is submitted, issue one (1) of the following licenses: ()

a. Daycare Center License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; ()

b. Group Daycare Facility License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; or ()

c. Family Daycare Home License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect. ()

03. Issuance of Provisional License. A provisional daycare license may be issued for a period of time not to exceed one hundred eighty (180) days provided this does not effect the health, safety, and well-being of any child in daycare at the home or facility and the Department determines that a licensing standard cannot be met but is expected to be corrected within six (6) months. A provisional daycare license automatically expires after one hundred eighty (180) days and can only be issued one (1) time in any twelve-month period. ()

04. Denial of Licensure. If the Department determines the applicant is not in compliance with the rules and minimum standards set forth in this chapter and further determines not to issue a regular license or provisional license, the Department will, within thirty (30) days from the date the completed application is submitted, issue a letter of denial of licensure stating the basis for the denial. ()

05. Incomplete Application. The Department is not required to take any action on an application until the application is complete. ()

06. Notification of License Renewal. The Department will notify the licensed daycare operator at least ninety (90) days prior to expiration of the license. ()

07. List of Licensed Daycare Facilities. The Department will maintain a list of all licensed daycare facilities for public use. ()

326. -- 329. (RESERVED).

330. STAFF AND OTHER INDIVIDUAL RECORD REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must maintain a current list covering the previous twelve-month period of all staff and other individuals thirteen (13) years of age or older who have unsupervised direct contact with children, or are regularly on the premises. The list must specify, at a minimum, the following: ()

01. Legal name. ()

02. Proof of Age. ()

- 03. Phone Number.** ()
- 04. Record of Training.** ()
- 05. Verification of Criminal History and Background Check Clearance.** ()
- 06. Results of Juvenile Justice Records.** The results of juvenile justice records, when applicable. ()
- 07. Certification.** Verification of Pediatric Rescue Breathing, Infant-Child CPR, and First Aid Treatment certification from a certified instructor, when applicable. ()
- 08. Record of Hours.** The times, dates, and records of hours on the premises each day. ()

331. CHILD RECORD CONTENT REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must maintain a record for each child in attendance covering the previous twelve-month period. The record must contain, at a minimum, the following: ()

- 01. Child's Full Name.** ()
- 02. Date of Birth.** ()
- 03. Parent or Guardian's Name, Address, and Contact Information.** ()
- 04. Emergency Contact Information.** ()
- 05. Child's Health Information.** ()
- a.** Immunization record or waiver of exemption form or statement; ()
- b.** Any medical conditions that could affect the care of the child; ()
- c.** Medications the child is taking or may be allergic to. ()
- 06. Record of Attendance.** The times, dates, and record of attendance each day. ()

332. -- 334. (RESERVED).

335. CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZES.

The Department determines the maximum allowable ratio of children to staff and maximum group size as described in the tables provided in Subsections 335.01 and 335.02 of this rule. ()

- 01. Daycare Centers Child-Staff Ratios and Maximum Group Size.**

DAYCARE CENTERS CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE Based on Age of Youngest Child TABLE 335.01		
<u>Ages and Counts Based on Age of Youngest Child</u>	<u>Child:Staff Ratio</u>	<u>Maximum Group Size</u>
<u>A child or children birth to two (2) years of age</u>	<u>6:1 or 12:2</u>	<u>12</u>
<u>All children at least two (2) years of age</u>	<u>8:1 or 16:2</u>	<u>16</u>
<u>All children at least three (3) years of age</u>	<u>10:1 or 20:2</u>	<u>20</u>
<u>All children at least four (4) years of age</u>	<u>12:1 or 24:2</u>	<u>24</u>
<u>All children at least five (5) years of age</u>	<u>18:1 or 36:2</u>	<u>36</u>

()

02. Group Daycare Facilities and Licensed Family Daycare Homes - Child-Staff Ratios and Maximum Group Size.

GROUP DAYCARE FACILITIES AND LICENSED FAMILY DAYCARE HOMES CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE Based on Age of Youngest Child TABLE 335.02		
<u>Ages and Counts Based on Age of Youngest Child</u>	<u>Child:Staff Ratio</u>	<u>Maximum Group Size</u>
<u>No child or children under the age of two (2)</u>	<u>12:1</u>	<u>12</u>
<u>One (1) or two (2) children under the age of two (2) years</u>	<u>10:1 or 12:2</u>	<u>10 or 12</u>
<u>Three (3) or more children under the age of two (2) years</u>	<u>9:1 or 12:2</u>	<u>9 or 12</u>

()

03. Compliance with Child-Staff Ratios and Maximum Group Sizes. Child-staff ratios and maximum group sizes must be maintained at all times during all hours of operation when children are in attendance and when transporting children. ()

a. Each child in attendance is counted by the Department as one (1) child for the purposes of determining compliance with child-staff ratios; ()

b. The ratio of children to staff and maximum group size in mixed age groups is determined by the age of the youngest child in attendance; ()

c. Each adult staff member who is providing direct care for a child or children is counted by the Department as one (1) staff member for the purposes of counting the number of

staff on-duty and determining compliance with child-staff ratios; and ()

d. Each staff member sixteen (16) and seventeen (17) years of age under the supervision of an adult staff member, when providing direct care for a child or children, may be counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios. ()

04. Supervision of Children. The owner or operator and all staff are responsible for the direct care, protection, supervision, and guidance of children through active involvement or direct observation. In addition to meeting all of the minimum requirements of child-staff ratio and maximum group size, the owner or operator of a daycare center, group daycare facility, or family daycare home licensed by the Department must ensure that at least one (1) adult staff member is: ()

a. Awake and on duty on the premises at all times during regular business hours or when children are in attendance, and ()

b. Currently certified in pediatric rescue breathing, infant-child CPR, and first-aid treatment. ()

05. Napping Children. Napping children who are not within sight of a staff member must be within easy hearing distance at all times. ()

06. Overnight Daycare. For daycare operators providing overnight care of children, the following must apply: ()

a. A sleeping child must sleep on the same level as the staff member who must be able to hear the child; and ()

b. A staff member must be awake and on duty to release and receive a child. ()

336. -- 339. (RESERVED).

340. DAYCARE CENTER TRAINING REQUIREMENTS.

Each owner or operator of a daycare center licensed by the Department must receive and ensure that each staff member receives and completes four (4) hours of ongoing training every twelve (12) months after the staff member's date of hire. ()

01. Child Development Training. Training must be related to continuing education in child development. ()

02. Documented Training. It is the responsibility of the owner or operator of the daycare center to ensure that each staff member has completed four (4) hours of training each year. The training must be documented in the staff member's record. ()

03. Pediatric Rescue Breathing, Infant-Child CPR and First Aid Treatment Training. Pediatric rescue breathing, infant-child CPR, and first aid treatment training will not count towards the required four (4) hours of annual training. ()

04. Staff Training Records. Each owner or operator of the daycare center is responsible for maintaining documentation of staff's training and may be asked to produce documentation at the time of license renewal. ()

342. -- 344. (RESERVED).

345. MANDATORY REPORTING OF ABUSE, ABANDONMENT, OR NEGLECT. Under Section 16-1605, Idaho Code, daycare personnel, including the owners, operators, staff, and any other person who has reason to believe that a child has been abused, abandoned, or neglected or is being subjected to conditions or circumstances which would reasonably result in abuse, abandonment, or neglect, must report or cause to be reported within twenty-four (24) hours, such conditions or circumstances to the Department or the proper law enforcement agency. ()

346. VISITATION AND ACCESS.

01. Visitation Rights. Parents and guardians have the absolute right to enter the daycare premises when their child is in the care of the daycare operator. Failure or refusal to allow parental or guardian entry to the daycare premises or access to their child may result in the suspension or revocation of a daycare license. ()

02. Denied or Limited Visitation Rights by Court Order. If a parent or guardian has been granted limited or has been denied visitation rights by a court of competent jurisdiction, and the daycare operator has written documentation from the court, Subsection 346.01 of this rule does not confer a right to visitation upon the parent or guardian. ()

03. Department Access. The owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must allow the Department access to the premises for re-inspection at any time during the licensing period. ()

347. -- 349. (RESERVED).

350. FIRE SAFETY STANDARDS. Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire safety standards outlined in Subsections 350.01 and 350.02 of this rule. ()

01. Inspections. Inspections must be completed by the local fire official or designee. For a daycare located outside of the area of authority outlined in Section 39-1109, Idaho Code, the Department can designate an approved inspector for daycare licensing purposes only. ()

02. Unobstructed Exits. Required exits must be located in such a way that an unobstructed path outside the building is provided to a public way or area of refuge. ()

a. Exit doors must open from the inside without the use of a key or any special knowledge or effort. ()

b. There must be at least two (2) exits located a distance apart of not less than one-half (1/2) the diagonal dimension of the building or portion used for daycare, but not to exceed seventy-five (75) feet. An exception may be made for the following: ()

i. The distance between exits may be extended to ninety (90) feet if the building is totally protected throughout with smoke detectors; or ()

ii. The distance between exits may be increased to one hundred ten (110) feet if the building is equipped with an automatic fire sprinkler system. ()

c. The required dimensions of exits must not be less than thirty-two (32) inches of clear exit width and not be less than six (6) feet, eight (8) inches in height. An exception for sliding patio doors will be accepted as a required second exit in a family daycare home and group daycare facilities only. ()

d. Sleeping room exits must be provided with at least one (1) emergency egress window having at least a minimum single net clear opening of five point seven (5.7) square feet, minimum height twenty-four (24) inches, minimum width twenty (20) inches, and maximum finished sill height not over forty-four (44) inches. ()

i. Approved egress windows from sleeping areas must be operable from the inside without the use of separate tools. ()

ii. In lieu of egress windows, an approved exit door is acceptable. ()

iii. An approved piece of furniture or platform, if anchored in place, may be approved to sit in front of a window if the sill height is over forty-four (44) inches. ()

e. Where children are located on a story below the level of exit discharge (basement), there must be at least two (2) exits, one (1) of which must open directly to the outside. More than one (1) exit from the basement opening directly to the outside may be required, depending on the structure of the building, in order to ensure the safety of the occupants. ()

f. Where children are located on a story above the level of exit discharge, there must be two (2) exits, one (1) of which must open directly to the outside and be in compliance with building codes. ()

351. FACILITY CAPACITY AND DETERMINING OCCUPANT LOAD.

Occupant load is determined by the local fire official or designee. ()

01. Area for Daycare Use Only. The local fire official or designee will only use those areas used for daycare purposes when determining the occupant load. ()

02. Facilities with an Occupancy Load of Fifty or More. Facilities with an occupancy load of fifty (50) or more occupants must meet the requirements in Section 350 of these rules in addition to Subsections 351.01 through 351.03 of this rule. ()

- a.** Exit doors must swing in the direction of egress. ()
- b.** Exit doors from rooms, if provided with a latch, must have panic hardware installed. ()
- 03.** Exit Signs. Exit signs must be installed at required exit doorways and wherever else necessary to clearly indicate the direction of egress. ()

352. FIRE EXTINGUISHERS AND SAFETY REQUIREMENTS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire extinguisher and safety requirements in this section of rule as applicable for size and type of facility. ()

01. Portable Fire Extinguisher. There must be an approved portable fire extinguisher (minimum 2A-10BC) mounted securely in a visible location not to exceed five (5) feet from the floor to the top of the extinguisher and not more than seventy five (75) feet travel distance to an extinguisher and maintained properly. ()

02. Kitchen Area. An approved fire extinguisher must be present or a hood-type fire suppression system must be installed in the kitchen area. ()

03. Fire Extinguishers. Approved fire extinguishers must be maintained properly. ()

04. Facilities Over Three Thousand Square Feet. Each daycare facility over three thousand (3,000) square feet is required to have additional fire extinguishers as approved by the local fire official or designee. ()

05. Fire Alarm System. Each daycare facility with over fifty (50) children, must have an approved fire alarm system installed. ()

06. Smoke Detectors. Smoke detectors must be installed and maintained in the following locations: ()

a. On the ceiling or wall outside or each separate sleeping area in the immediate vicinity of bedrooms; ()

b. In each room used for sleeping purposes; and ()

c. In each story within a facility including basements. ()

d. If there is a basement, there must be a smoke detector installed in the basement having a stairway which opens from the basement into the facility. Such detector must be connected to a sounding device or other detector to provide an alarm which is audible in the sleeping area. ()

07. Automatic Sprinkler Systems. An automatic sprinkler system must be provided in all daycare facilities greater than twenty thousand (20,000) square feet in area or when the

number of children under the age of eighteen (18) months exceeds one hundred (100). ()

353. FIRE SAFETY AND EVACUATION PLANS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must have an approved fire safety and evacuation plan prepared. Fire evacuation and safety plans must include the following: ()

01. Evacuation. Procedures and policies for accounting for staff and children after an evacuation is completed. ()

02. Assembly Point. Evacuation plan and assembly point for children and staff.()

03. Locations of Facility Exits. ()

04. Evacuation Routes. ()

05. Location of Fire Alarms. ()

06. Location of Fire Extinguishers. ()

07. Annual Review. Fire safety and evacuation plans must be reviewed or updated annually and available in the facility for reference and review. ()

08. Frequency of Fire and Emergency Evacuation Drills. Fire and evacuation drills must be conducted on a routine schedule and all staff and children must participate. ()

354. -- 359. (RESERVED).

360. HEALTH STANDARDS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the health standards in Subsections 360.01 through 360.19 of this rule. Health inspections will be completed by a qualified inspector designated by the Department. ()

01. Food Source. Food must be from an approved source as defined in IDAPA 16.02.19, "The Idaho Food Code." Food must not be served past expiration or "use by date." ()

02. Food Preparation. Food for use in daycare facilities must be prepared and served in a sanitary manner with sanitized utensils and on surfaces that have been cleaned, rinsed, and sanitized prior to use to prevent cross-contamination. ()

a. Frozen food must be thawed in the refrigerator, under cold running water, or as part of the cooking process. Food must be cooked to proper temperatures according to IDAPA 16.02.19, "The Idaho Food Code." ()

b. Individuals preparing food must use proper hand-washing techniques, minimize bare hand contact with food, and wear clean clothes. ()

03. Food Temperatures. Potentially hazardous foods must be kept refrigerated at forty-one degrees Fahrenheit (41°F) or below, held hot at one hundred thirty-five degrees Fahrenheit (135°F) or more, and reheated or cooled at safe temperatures according to IDAPA 16.02.19, "The Idaho Food Code." Refrigerators must be equipped with an accurate thermometer. ()

04. Food Storage. All food that is served in daycare facilities must be stored in such a manner that protects it from potential contamination. There must be no evidence of pests present in the daycare facility. ()

05. Food Contact Surfaces. Food contact surfaces must be kept clean and sanitized, including counters, serving tables, high chair trays, and cutting boards. ()

06. Dishwashing Sanitizing. Dishes, glasses, utensils, silverware and all other objects used for food preparation and eating must be sanitized using appropriate sanitizing procedures. ()

07. Utensil Storage. Clean utensils must be stored on clean shelves or drawers and not subject to recontamination. Sharp knives and other sharp objects must be kept out of reach of children. ()

08. Garbage. Garbage must be kept covered or inaccessible to children. ()

09. Hand Washing. Children and facility staff must be provided with individual or disposable towels for hand drying. The hand washing area must be equipped with soap and warm and cold running water. ()

10. Diaper Changing. Diaper changing must be conducted in such a manner as to prevent the spread of communicable diseases. A diaper-changing area must be separate from food preparation and serving areas and have easy access to a hand-washing sink. ()

11. Sleeping Areas. Children sleeping at the facility must have separate cots, mats, or beds and blankets. ()

12. Restrooms, Water Supply, and Sewage. All daycare facilities must have restrooms. ()

a. Each facility must have at least one (1) flushable toilet and at least one (1) hand washing sink with warm and cold water per restroom. ()

b. Plumbing and bathroom fixtures must be in good condition. ()

c. In addition, daycare centers must comply with requirements of the International Building Code incorporated by reference in Section 004 of these rules. ()

13. Water Supply. The facility's water supply must meet one (1) of the following requirements: ()

a. Be from a public water system which is maintained according to IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” at the time of initial application and application for license renewal; or ()

b. Be from a private source, such as well or spring, and must be tested annually for bacteria and nitrate, and approved by the Department. ()

c. Water used for consumption at a daycare facility must be from an acceptable source,. Temporary use of bottled water or boiled water may be allowed for a period specified by the by the Department. ()

14. Sewage Disposal. Facility sewage must be disposed of through a public system, or in the absence of a public system, in a manner approved by the local health authority, according to IDAPA 58.01.03 “Individual/Subsurface Sewage Disposal Rules.” ()

15. Use of Alcohol and Illegal Drugs. Alcohol and illegal drugs must not be used by operators, children, staff, volunteers, or visitors at daycare facilities or in the presence of children during hours of operation or in vehicles while transporting children. ()

a. Any individual under the influence of alcohol or drugs must not be permitted at or in the daycare facility. ()

b. Illegal drugs are prohibited by law and therefore must not be allowed on the premises of a licensed daycare facility at anytime whether the facility is open or closed. ()

16. Smoke Free Environment. Children must be afforded a smoke-free environment during all daycare hours, whether indoors or outdoors. While children are in care, the operator and all staff must ensure that no smoking or other tobacco use occurs within the facility, in outdoor areas, or in vehicles when children are present. ()

17. Medication. No person can administer any medication to a child without it first being authorized by a parent or caretaker. All medications, refrigerated or unrefrigerated, must be in a locked box or otherwise inaccessible to children. ()

18. Adequate Heat, Light and Ventilation. A daycare facility must have adequate heat, light and ventilation. Window and doors must be screened if used for ventilation. ()

19. Immunizations. Daycare operators must comply with the immunizations requirements provided in IDAPA 16.02.11, “Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho.” ()

361. MISCELLANEOUS SAFETY REQUIREMENTS.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with the miscellaneous safety standards in Subsections 361.01 through 361.07 of this rule. ()

01. Telephone. An operable telephone or cell phone must be available on the facility

at all times and the following conditions must apply: ()

a. The telephone number used to meet this standard must be made available to parents and guardians. ()

b. Emergency phone numbers to include 911, an adult emergency substitute operator, as well as the address and phone number of the facility, must be posted by the telephone or in a location that is immediately visible at all times. ()

03. Heat Producing Equipment. A furnace, fireplace, wood-burning stove, water heater and other flame or heat-producing equipment shall be installed and maintained as recommended by the manufacturer. Fireplaces and wood burning stoves shall be protected on all surfaces by screens or other means. ()

04. Portable Heating Devices. Portable heating devices must be limited and approved for use and location by the Fire Inspector prior to use within a facility. ()

05. Storage of Weapons, Firearms, and Ammunition. Firearms or other weapons which are stored at a daycare facility must be kept in a locked cabinet or other container that is inaccessible to children, including a locked gun safe, while children are in attendance. ()

a. Ammunition must be stored in a locked container separate from firearms. ()

b. Matches, lighters, and any other means of starting fires must be kept away from and out of the reach of children. ()

c. Other weapons that could cause harm to children must be stored out of reach of children. ()

06. Animals and Pets. Any pet or animal present at the facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The operator must maintain the animal's vaccinations and vaccination records. These records must be made available to the Department upon request. ()

07. Storage of Hazardous Materials. Cleaning materials, flammable liquids, detergents, aerosol cans, pesticides, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas or constitute a hazard to the children. ()

362. -- 364. (RESERVED).

365. BUILDINGS, GROUNDS, FURNISHINGS, AND EQUIPMENT.

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with these minimum standards in Subsections 365.01 through 365.08 of this rule. ()

01. Appliances and Electrical Cords. All appliances, lamp cords, exposed light

sockets and electrical outlets must be protected to prevent electrocution. ()

02. Balconies and Stairways. Balconies and stairways accessible to children must have substantial railings as required by the state-adopted International Building Code that is incorporated by reference in Section 004 of these rules. ()

03. Stairway Protection. Where an operator cares for children less than three (3) years of age, stairways must be protected to prevent child access to stairs. ()

04. Hazard Areas Restrictions. Based on the age and functioning level of children in care and the type of hazard, any outdoor hazard area must be restricted to prevent easy access to the hazard. ()

05. Fueled Equipment. Fueled equipment including, but not limited to, motorcycles, mopeds, lawn-care equipment and portable cooking equipment may not be stored or repaired in areas where children are present. ()

06. Water Hazards. Above and below ground pools, hot tubs, ponds, and other bodies of water that are on the daycare facility premises must provide the following safeguards: ()

a. The area surrounding the body of water must be fenced and locked in a manner that prevents access by children and meets the following requirements: ()

i. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide and be designed so that a young child cannot climb or squeeze under or through the fence. The fence must surround all sides of the pool and have a self-closing gate that has a self latching mechanism in proper working order that is out of the reach of young children. ()

ii. If the house forms one (1) side of the barrier for the pool, all doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the door is opened. ()

b. Furniture or other large objects must not be left near the fence in a manner that would enable a child to climb on the furniture or other large object and gain access to the pool. If the area surrounding a pool, hot tub, pond or other body of water is not fenced and locked, there must be a secured protective covering that will prevent access by a child. ()

c. Wading pools and buckets must be empty when not in use. ()

d. Children must be under direct supervision of an adult staff member who is certified in pediatric rescue breathing, infant-child CPR, and first aid treatment while using a bath tub, pool, hot tub, pond, or other body of water. ()

e. A minimum of a four (4) foot high fence must be present that prevents access from the daycare facility premises, if the daycare premises are adjacent to a body of water. ()

07. Indoor Play Areas and Toys. The indoor play areas must be clean, reasonably

neat and free from accumulation of dirt, rubbish or other health hazards. ()

08. Outdoor Play Areas and Toys. Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. ()

a. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four (4) feet high without any holes or spaces greater than four (4) inches in diameter. ()

b. Outdoor equipment, such as climbing apparatus, slides and swings, must be anchored firmly and placed in a safe location and in accordance with the manufacturer's instructions. ()

c. Outdoor play areas must be designed so that all parts are always visible and are easily supervised by a staff member. ()

d. Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges and sharp corners. Unguarded ladders on slides must be kept in good repair and well maintained. ()

e. Toys and objects with a diameter of less than one (1) inch (two point five (2.5) centimeters), objects with removable parts that have a diameter of less than one (1) inch (two point five (2.5) centimeters), plastic bags, styrofoam objects and balloons must not be accessible to children ages three (3) and under or children who are known to place such objects in their mouths. ()

366. -- 389. (RESERVED).

390. CONTINUED COMPLIANCE, REPORTING CHANGES, AND CRITICAL INCIDENTS.

Each daycare owner or operator must remain in compliance at all times with fire, safety, and health requirements as required in this chapter of rules. ()

01. Posting of License and Other Information. ()

a. A daycare license issued by the Department to operators meeting the standards in these rules must be posted in plain view where it can be seen by parents and the public upon entering the facility. ()

b. A daycare must post contact information of the Department and the statewide number to file daycare complaints. ()

02. Reporting Changes. The Department must be notified of any changes that would affect the terms of licensure or could affect the health, well-being, or safety of children. ()

03. Critical Incidents. A daycare operator must report any of the following to the Department within twenty-four (24) hours: ()

a. Serious injury or death of a child at the facility; ()

b. Any arrests, citations, withheld judgments, or criminal convictions of disqualifying crimes associated with Section 39-1113, Idaho Code, of an operator or any other individual regularly on the premises of the facility and provide documentation that the individual is not working with children or is not on the premises. ()

391. -- 394. (RESERVED).

395. FAILURE TO COMPLY.

01. Misdemeanors to Operate Without a License. It is a misdemeanor to operate a daycare center or group daycare facility within this state without first obtaining a daycare license from the Department or to operate a daycare center or group daycare facility without posting the license in a place easily seen by a parent or the general public. ()

a. The Department may grant a grace period of no more than sixty (60) days to allow the daycare facility to come into compliance with the minimum standards in this chapter and with Title 39, Chapter 11, Idaho Code. ()

b. The operator or owner must agree to begin the application process as described in Section 321 of these rules within one (1) business day of identification by the Department that a daycare owner or operator is not in compliance with Title 39, Chapter 11, Idaho Code or this chapter of rules. ()

02. Misdemeanor to Operate a Family Daycare Home for Four or More Children Without Obtaining a Criminal History Check. It is a misdemeanor to operate a family daycare home caring for four (4) or more children without obtaining the required criminal history check in Section 39-1105, Idaho Code. In the event of an initial citation for violation of the provisions of Section 39-1115, if a person makes the applications required within twenty (20) days, the complaint will be dismissed. Operating a family daycare home for four (4) or more children after failure to pass the required criminal history check is a misdemeanor. ()

03. Misdemeanor to Provide Daycare if Guilty of Certain Offenses. It is a misdemeanor to provide daycare services if found guilty of any offenses listed in Section 39-1113, Idaho Code. ()

~~301~~396. -- 399. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-1003

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized under Sections 39-1211 and 56-1004A, Idaho Code.

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

The Department is amending the proposed rule based on comments received from the Legislative Services Office (LSO). The amendments clarify when an adult member of a foster care household who is age 18 to 21 must have a criminal history and background check.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [September 1, 2010, Idaho Administrative Bulletin, Vol. 10-9, pages 346 and 347.](#)

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

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

DATED this 12th day of November, 2010.

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

THE FOLLOWING NOTICE 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 under Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), 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 15, 2010.

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

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

Due to practice issues that have arisen in the process of licensing foster homes, the requirements for criminal history and background checks are being clarified.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. These rule changes are being made to bring the rules into alignment with the Department's Title IV-E State Plan and applicable federal regulations.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 18th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0602-1003

403. MEMBER OF HOUSEHOLD QUALIFICATIONS AND SUITABILITY.

To assure the safety and well-being of children, a member of the household ~~shall~~ **must** be in compliance with the requirements specified in these rules. ~~(3-30-01)~~(____)

404. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.

All applicants for a foster care license and other adult members of the household must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," and the following requirements: (3-30-07)

01. Required Procedures. Each applicant for a foster home license, and any other adult member of the household, must participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

02. Change in Household Membership. By the next working day after another adult begins residing in a licensed foster home, a foster parent must notify the children's agency of the change in household membership and assure that the new adult member of the household will participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

03. Foster Parent's Child Turns Eighteen. A foster parent's child who turns eighteen (18) and ~~continues to~~ **lives continuously** in the home is not required to have a criminal history and background check **except as specified in Subsection 404.03.c. of this rule.** ~~(3-30-07)~~(____)

a. After turning eighteen (18) years of age, if the foster parent's adult child moves out of no longer lives in the foster parent's home for longer than ninety (90) days and returns to live subsequently resumes living in the licensed foster home as a permanent resident, he will be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days of his return from the date he became an adult member of the household. ~~(3-30-07)~~(____)

b. If the adult child leaves the foster home for the purpose of higher education or military service, and **periodically** returns **to the home** for less than ninety (90) days, he is not considered to ~~reside in the licensed foster home~~ **be an adult member of the household** and is not required to complete a criminal history and background check. **While in the home, #he** cannot have any unsupervised direct care responsibilities for any foster children in the home. Should he remain in the foster home for **more than** ninety (90) days ~~or longer~~, he **will immediately be considered an adult member of the household and** must complete a criminal history and background check within fifteen (15) days **from the date he became an adult member of the household.** ~~(3-30-07)~~(____)

c. If the adult child continues to live in his parent's licensed foster home or on the same property, he must complete a criminal history and background check within fifteen (15) days of turning twenty-one (21). This requirement is not necessary if the adult child has completed a criminal history and background check between the ages of eighteen (18) and twenty-one (21). (3-30-07)

04. Criminal History and Background Check at Any Time. The Department retains the authority to require a criminal history and background check at any time on individuals who are ~~permanent residents of~~ residing in a licensed foster home or on the foster parent's property. (3-30-07)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code.

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

The Department amended these rules to exclude the temporary census income from countable income. This rule was adopted as a temporary rule that published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 23 and 24. The complete text of the proposed rule was published in the May 5, 2010, Idaho Administrative Bulletin, Vol. 10-5, pages 35 and 36. This pending rule is being adopted as proposed.

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

This program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for ICCP participants. The estimated impact to federal funds is \$168,600.

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

DATED this 1st day of October, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 19, 2010.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking. This rule was adopted as a temporary rule with an effective date of January 1, 2010. The temporary rule docket published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 23 and 24.

The U.S. Census is conducted every ten years and the census for 2010 requires the Census Bureau to hire employees to conduct this field work. The State of Idaho has received approval from the Centers for Medicare and Medicaid Services to exempt temporary income earned by individuals temporarily working for the Census Bureau on the 2010 Census. The Department is aligning this chapter of rules with other Department rules to exclude the temporary census income from countable income in order to treat income for ICCP the same as other benefit programs. For ICCP participants, the temporary employment income cannot exceed a time period of six months.

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

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

This program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for ICCP participants. The estimated impact to federal funds is \$168,600.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this change provides a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact

Annie Dalgetty at (208) 334-5686.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 26, 2010.

DATED this 29th day of March, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1001

302. EXCLUDED INCOME.

The following sources of income are not counted as family income. (4-2-08)

01. Earned Income of a Dependent Child. Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

02. Income Received for Person Not Residing With the Family. Income received on behalf of a person who is not living in the home. (4-2-08)

03. Educational Funds. All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

04. Assistance. Assistance to meet a specific need from other organizations and agencies. (4-2-08)

05. Lump Sum Income. Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. (4-2-08)

06. Loans. Loans with written, signed repayment agreements. (4-2-08)

07. TAFI and AABD Benefits. TAFI and AABD benefits. (4-2-08)

08. Foster Care Payments. Foster care payments. (4-2-08)

09. AmeriCorps/VISTA Volunteers. Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)

10. Income Tax Refunds and Earned Income Tax Credits. Income tax refunds and

earned income tax credits are excluded as income. (4-2-08)

11. Travel Reimbursements. Reimbursements from employers for work-related travel. (4-2-08)

12. Tribal Income. Income received from a tribe for any purpose other than direct wages. (4-2-08)

13. Foster Parents' Income. Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)

14. Adoption Assistance. Adoption assistance payments are excluded from income. (4-2-08)

15. Child Support Payments. Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. (4-2-08)

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

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. The effective date for these rule changes is May 1, 2011.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code.

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 Idaho Child Care rules are being amended to be more effective and user friendly for Idahoans to access the program. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 275 through 286.](#)

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

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

DATED this 5th day of November, 2010.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

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

Thursday, October 21, 2010 at 6:30 p.m.

**Region IV Health and Welfare Office
1720 Westgate Drive
Suite D Conference Room
Boise, ID**

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 Idaho Child Care rules are being amended to be more effective and user friendly for Idahoans to access the program. These rules have been reorganized, repetitive requirements have been removed, and clarification has been added for how income and qualifying activity is calculated. Application time frames are being clearly defined in order to streamline eligibility determinations.

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

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

There is no anticipated fiscal impact to state general funds for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is clarifying existing language, reorganization of the current rule, and removing repetitive requirements.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 24th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-1002

012. -- ~~099~~49. (RESERVED).

APPLICATION REQUIREMENTS
(Sections 050 through 069)

050. ICCP APPLICATION FOR BENEFITS.

A family applying for child care benefits must submit a completed and signed application to the Department. ()

01. Application Received. The Department will date stamp the application on the day the application is received. The applicant has thirty (30) days from the date the application is received by the Department to complete the application process by providing all required verifications. ()

02. New Application Required. A new application is required if all requested verification is not provided within thirty (30) days from the date the application was received by the Department. The time limit can be extended by the Department for events beyond the Department's control. ()

03. Notification. The Department will act on applications for child care benefits within thirty (30) days of receipt. The applicant will be notified in writing of the approval or denial of the application and of the applicant's right to appeal. ()

051. -- 069. (RESERVED).

FINANCIAL CRITERIA FOR ICCP ELIGIBILITY
(Sections 070 through 099)

[Codified Section 100 has been moved and renumbered to proposed Section 070]

~~**1070. APPLICATION AND INCOME LIMITS FOR CHILD CARE BENEFITS.**~~

~~*Child care benefits are payments from the Department to child care providers on behalf of eligible families. An application for assistance for child care benefits must be completed, signed by the applicant, and received by the Department. The date of the application is the date it is received by the Department. The applicant must be notified in writing of the approval or denial of the application and of the right to appeal, if applicable. In order to receive ICCP assistance the applicant must not exceed the gross income limits described in Subsections 100.01 and 100.02 of this rule.*~~ (4-2-08)

01. Maximum Income Limits for ICCP Benefits. ~~*The maximum income limit for eligibility for payment of ICCP benefits is based on one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines. Maximum income limits by family size are as follows: A family's income must be less than the published 2007 federal poverty guidelines for one hundred thirty-five percent (135%) of poverty for a family of the same size. The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty>.*~~ (4-2-08)()

- a. One thousand five hundred forty dollars (\$1,540) for a household of two (2); (4-2-08)
- b. One thousand nine hundred thirty-two dollars (\$1,932) for a household of three (3); (4-2-08)
- c. Two thousand three hundred twenty-three dollars (\$2,323) for a household of four (4); (4-2-08)
- d. Two thousand seven hundred fifteen dollars (\$2,715) for a household of five (5); (4-2-08)
- e. Three thousand one hundred six dollars (\$3,106) for a household of six (6); (4-2-08)
- f. Three thousand four hundred ninety-eight dollars (\$3,498) for a household of seven (7); (4-2-08)
- g. Three thousand eight hundred eighty-nine dollars (\$3,889) for a household of eight (8); (4-2-08)
- h. Four thousand two hundred eighty-one dollars (\$4,281) for a household of nine: and (4-2-08)
- i. Four thousand six hundred seventy-two dollars (\$4,672) for a household of 10. (4-2-08)

02. Additional Household Member. Three hundred ninety-two dollars (\$392) is added to the maximum income limit for each additional family member. (4-2-08)

[Codified Section 301 has been moved and renumbered to proposed Section 071]

3071. COUNTABLE INCOME.

All gross earned and unearned income is counted in determining eligibility and the child care benefit amount, unless specifically excluded under Section ~~3072~~ of these rules. ~~(5-8-09)()~~

[Codified Section 302 has been moved and renumbered to proposed Section 072]

3072. EXCLUDED INCOME.

The following sources of income are not counted as family income. (4-2-08)

01. Earned Income of a Dependent Child. Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

02. Income Received for Person Not Residing With the Family. Income received on behalf of a person who is not living in the home. (4-2-08)

03. Educational Funds. All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

04. Assistance. Assistance to meet a specific need from other organizations and agencies. (4-2-08)

05. Lump Sum Income. Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. (4-2-08)

06. Loans. Loans with written, signed repayment agreements. (4-2-08)

07. TAFI and AABD Benefits. TAFI and AABD benefits. (4-2-08)

08. Foster Care Payments. Foster care payments. (4-2-08)

09. AmeriCorps/VISTA Volunteers. Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)

10. Income Tax Refunds and Earned Income Tax Credits. Income tax refunds and

earned income tax credits are excluded as income. (4-2-08)

11. Travel Reimbursements. Reimbursements from employers for work-related travel. (4-2-08)

12. Tribal Income. Income received from a tribe for any purpose other than direct wages. (4-2-08)

13. Foster Parents' Income. Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)

14. Adoption Assistance. Adoption assistance payments are excluded from income. (4-2-08)

15. Child Support Payments. Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. (4-2-08)

16. Temporary Census Income. All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten-year U.S. Census. (1-1-10)T

[Codified Section 303 has been moved and renumbered to proposed Section 073]

3073. AVERAGING SELF-EMPLOYMENT INCOME.

01. Annual Self-Employment Income. When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (5-8-09)

a. The income is received over a shorter period of time than twelve (12) months; and (5-8-09)

b. The household receives income from other sources in addition to self-employment. (5-8-09)

02. Seasonal Self-Employment Income. A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (5-8-09)

[Codified Section 304 has been moved and renumbered to proposed Section 074]

3074. CALCULATION OF SELF-EMPLOYMENT INCOME.

The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses as determined in Subsection 3074.03 of this rule.

(5-8-09)()

01. How Monthly Income is Determined. If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past income does not reflect expected future income, a proportionate adjustment is made to the expected monthly income.

(5-8-09)

02. Capital Gains Income. Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department calculates capital gains using the federal income tax method. If the household expects to receive any capital gains income from self-employment assets during the certification period, this amount is added to the monthly income as determined in Subsection 3074.01 of this rule to determine the gross monthly income.

(5-8-09)()

03. Self-Employment Expense Deduction. The Department uses the standard self-employment deduction in Subsection 3074.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 3074.03.b. of this rule.

(5-8-09)()

a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 303074.01 and 303074.02 of this rule; or

(5-8-09)()

b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income:

(5-8-09)

- i. Net losses from previous tax years; (5-8-09)
- ii. Federal, state, and local income taxes; (5-8-09)
- iii. Money set aside for retirement; (5-8-09)
- iv. Work-related personal expenses such as transportation to and from work; and (5-8-09)
- v. Depreciation. (5-8-09)

075. PROJECTING MONTHLY INCOME.

Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below:

()

01. Income Already Received. Count income already received by the household

during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30) days to project future income. ()

02. Anticipated Income. Count income the household and the Department believe the household will get during the remainder of the certification period. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income. ()

a. Full Month's Income. If income will be received for all regular pay dates in the month, it is considered a full month of income. ()

b. If income will not be received for all regular pay dates in the month, it is not considered a full month of income and it is not converted. ()

c. Income Paid on Salary. Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. ()

d. Income Paid at Hourly Rate. Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. ()

e. Fluctuating Income. When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. ()

076. CONVERTING INCOME TO A MONTHLY AMOUNT.

If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: ()

01. Weekly Amount. Multiply weekly amounts by four point three (4.3). ()

02. Bi-Weekly Amount. Multiply bi-weekly amounts by two point one five (2.15). ()

03. Semi-Monthly Amount. Multiply semi-monthly amounts by two (2). ()

04. Salary Amount. Use the exact monthly income if it is expected for each month of the certification period. ()

077. -- 099. (RESERVED).

NON-FINANCIAL CRITERIA
(Sections 100 Through 199)

[Codified Section 100 has been moved and renumbered to proposed Section 070]

100. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

104. FAMILY COMPOSITION.

A family is a group of individuals living in a common residence, whose combined income is considered in determining eligibility and the child care benefit amount. No individual may be considered a member of more than one (1) family in the same month. The following individuals are included in determining the family composition: (4-2-08)

01. Married Parents. Married parents living together in a common residence, includes biological, adoptive, step-parent, and foster parent. ~~(4-2-08)~~()

02. Unmarried Parents. Unmarried parents who live in the same home and who have a child in common living with them. (4-2-08)

03. Dependents. Individuals who are claimed as dependents for tax purposes. (4-2-08)

04. Minor Parent. A minor parent and child are considered a separate family when they apply for child care benefits, even if they live with other relatives. (4-2-08)

05. Individual Acting In Loco Parentis. An individual acting in loco parentis who is eligible to apply for child care benefits. (4-2-08)

105. ELIGIBLE CHILD.

A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: (4-2-08)

01. Immunizations Requirements. A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school. (4-2-08)

02. Citizenship or Alien Status Requirement. A child must be one (1) of the following: (4-2-08)

- a. A citizen; (4-2-08)
- b. Living lawfully in the United States. (4-2-08)

03. Child's Age Requirement. A child must be under thirteen (13) years of age, with the following exceptions: (4-2-08)

a. A child thirteen (13) years of age or older may be eligible for child care benefits if he meets one (1) or more of the following criteria: (4-2-08)

i. A child is eligible for child care benefits until the month of his eighteenth birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. (4-2-08)

ii. A child may be eligible for child care benefits until the month of his eighteenth birthday if a court order, probation order, child protection, or mental health case plan requires constant supervision. (4-2-08)

b. A child who is eligible under Subsection 105.03.a. **of this rule** may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday. ~~(4-2-08)~~()

04. Joint Custody. A child may move from one (1) parent's home to the other parent's home on a regular basis. The child may be a member of either household, but not both households. If the parents cannot agree on the child's household for the child care case, the child is included in the household of the first parent to apply who is both income and activity eligible. ()

(BREAK IN CONTINUITY OF SECTIONS)

QUALIFYING ACTIVITIES
(Sections 200 through 299)

200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

To be eligible for child care benefits, ~~a family~~ each parent included in the household must need child care because they are engaged in one (1) of the qualifying activities listed in Subsections 200.01 through 200.05 of this rule. ~~(5-8-09)~~()

01. Employment. The parent is currently employed. (4-2-08)

02. Self-Employment. The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-8-09)

a. For the first six (6) months of self-employment benefits assistance, actual activity

hours are used ~~to determine benefit assistance for a parent who is self-employed.~~ (5-8-09)()

b. After receiving six (6) months of **self-employment child care** benefits ~~assistance~~, the number of ~~self-employment~~ activity hours ~~that will be used to calculate benefits can~~ **will** be limited ~~for a parent who is self-employed~~. To calculate the activity hours ~~allowed for ICCP benefit assistance~~, the gross monthly self-employment income is divided by the current federal minimum ~~hourly wage to determine the number of self-employment activity hours allowed~~. The **qualifying activity hours are the** lesser of the calculated activity hours or actual activity hours ~~will be used to determine the benefit assistance.~~ (5-8-09)()

03. Training or Education. The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

- a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)
- b. Persons with baccalaureate degrees or who are attending post-baccalaureate classes do not qualify for child care benefits. (4-2-08)
- c. More than forty (40) months of post-secondary education has been used as a qualifying activity. (4-2-08)

04. Preventive Services. The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. (4-2-08)

05. Personal Responsibility Contract (PRC). The parent is completing Personal Responsibility Contract (PRC) activities negotiated between the Department and the parent as described in IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families (TAFI) in Idaho." (4-2-08)

~~**201. REPORTING REQUIREMENTS FOR FAMILIES.**~~

~~**01. Changes That Must Be Reported Within Ten Days.** A family who applies for or receives child care benefits must report the following changes within ten (10) days of the change:~~ (4-2-08)

- ~~a. Anyone entering or leaving the household. (4-2-08)~~
- ~~b. Change in the rates charged for child care services; (4-2-08)~~
- ~~c. Change in the hours or nature of any qualifying activity; (4-2-08)~~
- ~~d. Change in the number of hours worked; (4-2-08)~~
- ~~e. A permanent change in rate of pay; (4-2-08)~~
- ~~f. Any other permanent change in monthly income, either earned or unearned; and (4-2-08)~~

- ~~g.~~ *A change of address for either the participant or the child care provider. (4-2-08)*
- ~~02.~~ *Changing Providers. (4-2-08)*
- ~~a.~~ *Changing Providers During the Month. A parent must notify ICCP by the twenty-fifth of the month of his intent to change providers for the next month of service. (4-2-08)*
- ~~b.~~ *Changing Providers Without Providing Notice. A parent who chooses to change providers without providing notice to the Department and who does not have good cause for failing to report the change, is responsible to pay the new provider for the next month of service. (4-2-08)*

201. PROJECTING QUALIFYING ACTIVITY HOURS.

01. Activity Hours. Activity is projected for each month. Past activity may be used to project future activity if the employer and number of hours worked are the same and are expected to remain the same throughout the certification period. For students, a new class schedule must be submitted at the beginning of each semester or change in schedule. Hours for each qualifying activity must be projected individually and converted to a monthly amount. ()

01. Weekly Hours. Multiply weekly amounts by four point three (4.3). ()

02. Bi-weekly Hours. Multiplying bi-weekly amounts by two point one five (2.15). ()

03. Semi-Monthly Hours. Multiplying semi-monthly amounts by two (2). ()

04. Monthly Hours. Use the exact monthly hours if it is expected for each month of the certification period. ()

202. -- ~~2399.~~ (RESERVED).

300. INCOME LIMIT.

A family's income must be less than the published 2007 federal poverty guidelines for one hundred thirty-five percent (135%) of poverty for a family of the same size. The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty/index.shtml>. (4-2-08)

[Codified Sections 301 through 304 have been moved and renumbered to proposed Sections 071 through 074, respectively]

~~305. — 399. (RESERVED).~~

400. REQUIREMENTS FOR IN-HOME CARE UNDER ICCP.

Parents must contact the Department to request approval of in-home child care. Only parents who

have qualified activities outside their home will be considered for in-home care approval. The Department limits the approval of all in-home child care under ICCP to the following circumstances: (4-2-08)

01. Three or More Children in the Home. There are three (3) or more **ICCP eligible** children in the home who are ~~eligible for ICCP~~ **not in school at any time during the day** and require child care. (4-2-08)()

02. Fewer Than Three Children in the Home. If there are fewer than three (3) children in the home who are eligible for ICCP and require child care, in-home care will be approved by the Department only when one (1) of the following special circumstances are met: (4-2-08)

a. Parents' qualifying activity occurs during times when out-of-home care is not available. If child care is needed during any period when out-of-home care is not available, in-home care will be approved for the entire time care is needed. A family is not expected to change between out-of-home and in-home care. (4-2-08)

b. The family lives in an area where out-of-home care is not available. (4-2-08)

c. A child has a verified illness or disability that would place the child or other children in an out-of-home facility at risk. (4-2-08)

401. -- 499. (RESERVED).

PAYMENT INFORMATION
(Sections 500 through 599)

500. ALLOWABLE CHILD CARE COSTS.

Care provided to an eligible child by an eligible child care provider is payable subject to the following conditions: (4-2-08)

01. Payment for Employment, Training, Education, or Preventive Service Hours. Child care must be reasonably related to the hours of the parent's qualifying activities. ~~Travel time is included in determining qualifying activities.~~ (4-2-08)()

02. Family Member or Guardian Not Payable. A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment.. (4-2-08)

03. One-Time Registration Fees. One-time fees for registering a child in a child care facility are payable above the local market rate, if the fee is charged to all who enroll in the facility. Fees may not exceed usual and customary rates charged to all families. Registration fees are separate from local market rates. (4-2-08)

04. Local Market Rates (LMR) for Child Care. The local market rates are the

maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted biannually. However, due to budgetary considerations, the Department may opt not to update the rate structure following a survey. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

502. SLIDING FEE SCHEDULES.

Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and may not waive or defer these costs. (7-1-09)

01. Poverty Rates. Poverty rates will be one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines published in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-2-08)

02. Calculating Family Payment. ~~Families must pay the provider their share of costs for child care services which include the families' co-payments and any charges not paid by the Department.~~ Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment listed in the following table: (4-2-08)()

03. ICCP Sliding Fee Schedule.

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
	7%	\$499	\$599	\$699	\$799	\$899	\$1,099	\$1,199	\$1,399
11%	\$799	\$1,099	\$1,299	\$1,499	\$1,699	\$1,999	\$2,199	\$2,399	\$2,599
16%	\$949	\$1,249	\$1,449	\$1,699	\$1,999	\$2,299	\$2,549	\$2,799	\$3,049
21%	\$1,099	\$1,399	\$1,599	\$1,899	\$2,299	\$2,599	\$2,899	\$3,199	\$3,499
26%	\$1,165	\$1,465	\$1,731	\$2,031	\$2,399	\$2,731	\$3,031	\$3,365	\$3,665
31%	\$1,231	\$1,531	\$1,863	\$2,163	\$2,499	\$2,863	\$3,163	\$3,531	\$3,831
36%	\$1,299	\$1,599	\$1,999	\$2,299	\$2,599	\$2,999	\$3,299	\$3,699	\$3,999

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
41%	\$1,308	\$1,616	\$2,008	\$2,316	\$2,625	\$3,016	\$3,325	\$3,716	\$4,025
46%	\$1,317	\$1,633	\$2,017	\$2,333	\$2,651	\$3,033	\$3,351	\$3,733	\$4,051
51%	\$1,326	\$1,650	\$2,026	\$2,350	\$2,677	\$3,050	\$3,377	\$3,750	\$4,077
56%	\$1,335	\$1,667	\$2,035	\$2,367	\$2,703	\$3,067	\$3,403	\$3,767	\$4,103
61%	\$1,344	\$1,684	\$2,044	\$2,384	\$2,729	\$3,084	\$3,429	\$3,784	\$4,129
66%	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156
71%	\$1,386	\$1,743	\$2,100	\$2,457	\$2,814	\$3,171	\$3,528	\$3,885	\$4,242
76%	\$1,416	\$1,780	\$2,144	\$2,508	\$2,872	\$3,236	\$3,600	\$3,964	\$4,328
81%	\$1,446	\$1,817	\$2,188	\$2,559	\$2,930	\$3,301	\$3,672	\$4,043	\$4,414
86%	\$1,476	\$1,854	\$2,232	\$2,610	\$2,988	\$3,366	\$3,744	\$4,122	\$4,500
91%	\$1,506	\$1,891	\$2,276	\$2,661	\$3,046	\$3,431	\$3,816	\$4,201	\$4,586
96%	\$1,540	\$1,932	\$2,323	\$2,715	\$3,106	\$3,498	\$3,889	\$4,281	\$4,672

(4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

600. CHANGE REPORTING REQUIREMENTS.

A family who applies for or receives child care benefits must report the following permanent changes within ten (10) days of the date the change occurs. ()

01. Change in Activity Hours. ()

02. Change in Rate of Pay. ()

03. Change in Your Permanent Address. ()

04. Change in Number of Household Members. ()

05. Change in Unearned Income. ()

06. Change in Child Care Provider. ()

6001. ~~RESPONSIBILITY TO~~ REQUIRED ACTION ON REPORTED CHANGES.

Providers and those eligible for child care assistance are responsible for reporting changes which

~~may affect child care benefits.~~ The Department will take the actions listed below on changes that are reported within the time frame listed in Section 600 of these rules. ~~(7-1-09)~~()

01. Change in Income or Hours of Activity. ()

a. If a change in income or hours of qualifying activity results in a decrease in the amount of the child care benefit, the Department will make the change effective the month following the month the change is reported. (4-2-08)

b. If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the change was reported. ()

02. Change in Billed Amount. If the billed amount of child care ~~results in a decrease in the amount of the child care benefit~~ changes, the Department will make the changes effective in for the month the changes ~~were~~ is reported. ~~(4-2-08)~~()

~~**03. Change Resulting in an Increase.** If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the changes were reported.~~ ~~(4-2-08)~~

(BREAK IN CONTINUITY OF SECTIONS)

701. RECOUPMENT OF OVERPAYMENTS.

01. Recoupment of Overpayments. The Department may recoup or recover the amount paid for child care services from a provider. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Recoupment of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more. Interest will not accrue on overpayments made due to Department error. An overpayment due to family or provider error, IPV or fraud must be recovered in full. (7-1-09)

02. Parental Repayment Requirement. A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section ~~201~~ 600 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. ~~(4-2-08)~~()

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.03 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW - SECURITY FOR COMPENSATION

DOCKET NO. 17-0203-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 72-508, 72-520, 72,721, 72-722, and 72-723, Idaho Code.

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

The pending rule is being adopted as proposed. This is a Chapter Repeal. The notice of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, page 290](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jane McClaran at 208-334-6042.

DATED this November 18, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: 208-334-6059
Fax: 208-334-5145

THE FOLLOWING NOTICE 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, 72-520, 72-721, 72-722, and 72-723, 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 20, 2010.

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

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

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed in its entirety and two new chapters are being adopted to clarify each entity's rules. The new chapter, IDAPA 17.02.10 (Insurance Carriers), adopts rules governing insurance carriers that clarify terms and implements more comprehensive reporting requirements. The new chapter, IDAPA 17.02.11 (Self-Insured Employers), adopts rules governing self insured employers that clarify terms, provide a more detailed application process and outline continuing reporting and security deposit requirements necessary to maintain self insured status.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane

McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this September 1, 2010.

IDAPA 17.02.03 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.05 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- INDUSTRIAL COMMISSION

DOCKET NO. 17-0205-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 72-508, 72-520, 72,721, 72-722, and 72-723, Idaho Code.

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

The pending rule is being adopted as proposed. The notice of the temporary and proposed rule was published in the July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, pages 82 through 85.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Scott McDougall at 208-334-6063.

DATED this November 18, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: 208-334-6059
Fax: 208-334-5145

THIS NOTICE PULISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 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 July 21, 2010.

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

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

To coincide with statute changes enacted by the 2010 legislature in Section 72-528, Idaho Code, to reduce the redundancy of reporting information to the Industrial Commission of costs and fees associated with attorneys hired by injured workers. The attorney's costs and fees are already required on all proposed lump sum settlements and on the accompanying Attorney Fee Memorandum. Forms 1022 and 1023 sent out by the Commission require identical information.

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:

To conform to the language changes to Section 72-528, Idaho Code, approved by the 2010 legislature that become effective July 1, 2010.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact with these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are not controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Scott McDougall, 208-334-6063.

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 July 28, 2010.

DATED this 17th day of May 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0205-1001

281. RULE GOVERNING REPORTING OF ATTORNEY FEES.

01. Requirements for Reporting by Employer/Surety Attorney. When requested by the Commission, ~~7~~the following information shall be reported to the Commission, on a form furnished by the Commission (see IC Form 1023 below) by all sureties, self-insurers, the State Insurance Fund, the Industrial Special Indemnity Fund, and non-insured employers, relative to each case litigated before the Industrial Commission within thirty (30) days of the request of the Commission, following the entry of a final award by the Industrial Commission, or, in the event of an appeal to a higher court, not later than thirty (30) days following a final ruling by the court. The information reported shall break down the litigation expenses incurred in each case by the reporting party into the following categories, and, if the case is appealed, shall include such costs incurred on appeal: ~~(7-15-88)~~()

- a. All fees paid to attorneys; (7-15-88)
- b. All expenses charged by attorneys; (7-15-88)
- c. Charges for reports or testimony of witnesses; (7-15-88)
- d. Cost of any depositions taken; (7-15-88)
- e. Cost for investigation made before or during hearing; (7-15-88)
- f. Costs of research or legal briefs (if separate from attorney fees). (7-15-88)

IC Form 1023:

INDUSTRIAL COMMISSION, P.O. BOX 83720, BOISE, ID 83720-0041

I.C. CASE NO. _____

I.C. CASE NAME _____

REPORT OF LITIGATION EXPENSES
(EMPLOYER/SURETY/ISIF/SELF INSURERS)

In accordance with the requirements of Section 72-528, Idaho Code, this form shall be filled out and returned to the Industrial Commission within thirty (30) days of the request by the Commission, following the time of entry of a final award by the Industrial Commission in the above case, or, in the event of an appeal to a final court, within 30 days following a final ruling by the court. If there is an appeal, the totals specified below shall include the expenses, costs, or fees incurred in the appeal.

1. Attorneys fees paid in case:
2. Expenses charged by attorneys:
3. Charges for reports or testimony of witnesses:
4. Cost of any depositions taken:
5. Cost of investigations made before or during hearing:
6. Costs of research or legal briefs (if separate from attorneys fees):
7. Filing fees paid on account of the litigation

TOTAL

Dated this _____ day of _____, 20 ____.

FIRM NAME _____

BY _____

Check Applicable Box:

Self Insured Uninsured Employer Surety

State Insurance Fund Industrial Special Indemnity Fund

Receipt of this form from the Commission shall be deemed a request for the information.

Sample copies of IC Form 1023 are available from the Industrial Commission, Judicial Division or Compensation Consultants, ~~317 Main Street~~, P. O. Box 83720 Boise, Idaho 83720-0041, telephone (208) 334-6000.

02. Information to Be Reported by Claimant Attorney. When requested, ~~7~~the following information shall be reported to the Commission, on a form furnished by the Commission (see IC Form 1022 below) by all attorneys engaged in representing any claimant in a litigated workers' compensation insurance claim before the Commission, relative to each case

litigated, within thirty (30) days of request of the Commission following the entry of a final award by the Industrial Commission, or in the event of an appeal to a higher court, not later than thirty (30) days following a final decision by the court. The information reported shall break down into the following categories the litigation expenses incurred in each case, and, if the case is appealed, shall include such expenses or costs incurred on appeal: ~~(7-15-88)~~()

- a. Attorneys fees incurred in litigation and charged to claimant; (7-15-88)
- b. Expenses incurred in litigation and charged to claimant. (7-15-88)

IC Form 1022:

INDUSTRIAL COMMISSION, P. O. BOX 83720, BOISE, ID 83720-0041

I.C. CASE NO. _____

I.C. CASE NAME _____

REPORT OF LITIGATION EXPENSES (CLAIMANT'S ATTORNEY)

In accordance with the requirements of Section 72-528, Idaho Code, this form shall be filled out and returned to the Industrial Commission within thirty (30) days of request of the Commission following the time of entry of a final award by the Industrial Commission in the above case, or, in the event of an appeal to a final court, within thirty (30) days following a final ruling by the court. If there is an appeal, the totals specified below shall include the expenses, costs, or fees incurred in the appeal.

- 1. Attorneys fees incurred in litigation and charged to claimant:
- 2. Expenses incurred in litigation and charged to claimant:

TOTAL

Dated this _____ day of _____, 20____.

FIRM NAME _____

BY _____

Receipt of this form from the Commission shall be deemed a request for the information.

Sample copies of IC Form 1022 are available from Industrial Commission, 317 Main Street, P.O. Box 83720 Boise, Idaho 83720-0041, telephone (208) 334-6000.

03. Definition of Litigated Case. For purposes of Section 72-528, Idaho Code, and this rule, a "case litigated before the Industrial Commission" shall mean a case in which a Complaint (formerly an application for hearing) has been filed. (7-15-88)

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 72-508, 72-520, 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.

The pending rule is being adopted as proposed. This is a Chapter Repeal. The notice of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, page 291.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Patti Vaughn at 208-334-6084.

DATED this November 18, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: 208-334-6059
Fax: 208-334-5145

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE
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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 Section(s) 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 held as follows:

OCTOBER 7, 2010 4:00 p.m. – 6:00 p.m.	OCTOBER 12, 2010 4:00 p.m. - 6:00 p.m	OCTOBER 19, 2010 2:00 p.m. - 5:00 p.m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

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

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

IDAPA 17.02.08 is being repealed and rewritten and separated into 2 chapters. A new chapter, IDAPA 17.02.09, Medical Fees, moves the conversion factors into a separate chapter for clarity. This new chapter adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. IDAPA 17.02.08 contains the balance of the rule without substantive change and is being published in this Bulletin under Docket No. 17-0208-1002.

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

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

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

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

this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

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 27, 2010.

DATED this 26th day of August, 2010.

IDAPA 17.02.08 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1002 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 72-508, 72-520, 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.

The pending rule is being adopted as proposed. This is a Chapter Rewrite. The notice of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 292 through 297.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Patti Vaughn at 208-334-6084.

DATED this November 18, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: 208-334-6059
Fax: 208-334-5145

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

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

OCTOBER 7, 2010 4:00 p.m. – 6:00 p.m.	OCTOBER 12, 2010 4:00 p.m. - 6:00 p.m	OCTOBER 19, 2010 2:00 p.m. - 5:00 p.m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

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 new **IDAPA 17.02.09, Medical Fees**, which is being published in this Bulletin, adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. **IDAPA 17.02.09** also provides a new workers' compensation fee schedule for hospitals and ambulatory surgery centers. Since these adjustments may occur annually, they were split from **IDAPA 17.02.08, Miscellaneous Provisions**, which is being rewritten in this docket with the balance of the former **IDAPA 17.02.08** without substantive changes.

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

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

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the

following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

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 27, 2010.

DATED this 26th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0208-1002

IDAPA 17, TITLE 02, CHAPTER 08

17.02.08 - MISCELLANEOUS PROVISION

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provision of Section 72-508, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.08, "Miscellaneous Provisions." ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

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

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of

business is 700 S. Clearwater Lane, Boise, ID 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 032. (RESERVED).

033. RULE GOVERNING APPROVAL OF ATTORNEY FEES IN WORKERS' COMPENSATION CASES.

01. Authority and Definitions. Pursuant to Sections 72-404, 72-508, 72-707, 72-735 and 72-803, Idaho Code, the Commission promulgates this rule to govern the approval of attorney fees. ()

a. “Available funds” means a sum of money to which a charging lien may attach. It shall not include any compensation paid or not disputed to be owed prior to claimant’s agreement to retain the attorney. ()

b. “Approval by Commission” means the Commission has approved the attorney fees in conjunction with an award of compensation or a lump sum settlement or otherwise in accordance with this rule upon a proper showing by the attorney seeking to have the fees approved. ()

c. “Charging lien” means a lien, against a claimant’s right to any compensation under the Workers’ Compensation laws, which may be asserted by an attorney who is able to demonstrate that: ()

i. There are compensation benefits available for distribution on equitable principles; ()

ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid; ()

iii. It was agreed that counsel anticipated payment from compensation funds rather than from the client; ()

iv. The claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and ()

v. There are equitable considerations that necessitate the recognition and application of the charging lien. ()

d. “Fee agreement” means a written document evidencing an agreement between a claimant and counsel, in conformity with Rule 1.5, Idaho Rules of Professional Conduct (IRPC). ()

e. “Reasonable” means that an attorney’s fees are consistent with the fee agreement

and are to be satisfied from available funds, subject to the element of reasonableness contained in IRPC 1.5. ()

i. In a case in which no hearing on the merits has been held, twenty-five percent (25%) of available funds shall be presumed reasonable; or ()

ii. In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of available funds shall be presumed reasonable; or ()

iii. In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. ()

02. Statement of Charging Lien. ()

a. All requests for approval of fees shall be deemed requests for approval of a charging lien. ()

b. An attorney representing a claimant in a Workers' Compensation matter shall in any proposed lump sum settlement, or upon request of the Commission, file with the Commission, and serve the claimant with a copy of the fee agreement, and an affidavit or memorandum containing: ()

i. The date upon which the attorney became involved in the matter; ()

ii. Any issues which were undisputed at the time the attorney became involved; ()

iii. The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; ()

iv. Disputed issues that arose subsequent to the date the attorney was hired; ()

v. Counsel's itemization of compensation that constitutes available funds; ()

vi. Counsel's itemization of costs and calculation of fees; and ()

vii. Counsel's itemization of medical bills for which claim was made in the underlying action, but which remain unpaid by employer/surety at the time of lump sum settlement, along with counsel's explanation of the treatment to be given such bills/claims following approval of the lump sum settlement. ()

viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the charging lien. ()

c. Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing.

()

03. Procedure if Fees Are Determined Not to Be Reasonable. ()

a. Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Subsection 033.02 may constitute grounds for an informal determination that the fee requested is not reasonable. ()

b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. ()

c. The Commission shall order an employer to release any available funds in excess of those subject to the requested charging lien and may order payment of fees subject to the charging lien which have been determined to be reasonable. ()

d. The proponent of a fee which is greater than the percentage of recovery stated in Subsections 033.01.e.i., 033.01.e.ii., or 033.01.e.iii. shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a charging lien and reasonableness of his or her fee. ()

04. Disclosure. Upon retention, the attorney shall provide to claimant a copy of a disclosure statement. No fee may be taken from a claimant by an attorney on a contingency fee basis unless the claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the fee agreement, so long as it contains the text of the numbered paragraphs one (1) and two (2) of the disclosure. A copy of the agreement must be given to the client. The disclosure statement shall be in a format substantially similar to the following:

State of Idaho
Industrial Commission

Client's name printed or typed _____

Attorney's name and address _____
printed or typed

DISCLOSURE STATEMENT

1. In workers' compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you.

2. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Commission to resolve the dispute.

I certify that I have read and understand this disclosure statement.

Client's Signature Date _____

Attorney's Signature Date _____

()

034. -- 060. (RESERVED).

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. ()

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. ()

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 on IC Form 8, as prescribed by the Commission for this purpose, as substantially set forth below:

IC Form 8:	
NOTICE OF CLAIM STATUS	
Injured Worker	SSN

Date of Injury	

Employer	

Insurance Company	

IC Form 8:
NOTICE OF CLAIM STATUS

Address	State	Zip
This is to notify you of the denial or change of status of your workers' compensation claim as indicated in the statement checked below.		
Your claim is denied.		
Reason		
Your benefit payments will be	Reduced	Increased
Effective date		
Reason		
Your benefit payments will be stopped.		Effective date
Reason		
Your claim is being investigated.		
A decision should be made by		
Other		Effective date
Explanation		
See attached medical reports		
Signature of insurance company adjuster/examiner		Date
Name (typed or printed)		

A sample copy of IC Form 8 is available from the;
Industrial Commission
700 S. Clearwater Lane
P. O. Box 83720,
Boise, Idaho 83720-0041
Telephone (208) 334-6000.

()

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.

()

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.

()

062. -- 999. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.09 - MEDICAL FEES

DOCKET NO. 17-0209-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session with the exception of Section 032, which becomes effective on January 1, 2012, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 72-508, 72-520, 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.

The pending rule is being adopted as amended as a result of public hearings conducted and written comments received from sureties, hospitals, and Ambulatory Surgery Centers (APC). The definition of Critical Access Hospitals was redefined for better clarity. Changes were made to clarify which APC weight schedule is to be used and the annual effective date of the APC weight schedule. A slight increase in the base rate was made for both the hospital outpatient and ASC services. Also, invoice costs for reimbursement of implantable hardware was changed to aggregate invoice costs with a cap of \$3,000 for inpatient services and \$1,000 for outpatient and ASC services.

The notice of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 298 through 305.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Patti Vaughn at 208-334-6084.

DATED this November 18, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: 208-334-6059
Fax: 208-334-5145

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

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

OCTOBER 7, 2010 4:00 p.m. – 6:00 p.m.	OCTOBER 12, 2010 4:00 p.m. - 6:00 p.m	OCTOBER 19, 2010 2:00 p.m. - 5:00 p.m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

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 new Chapter 9, Medical Fees, adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. This new Chapter 9 also provides a new workers' compensation fee schedule for hospitals and ambulatory surgery centers. Since these adjustments may occur annually, they were split from the current Chapter 8, Miscellaneous Provisions.

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

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

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

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, 208-334-6000.

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 27, 2010.

DATED this 26th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0209-1001

IDAPA 17, TITLE 02, CHAPTER 09

17.02.09 - MEDICAL FEES

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provision of Sections 72-508, and 72-803, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.09, "Medical Fees." ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the

Administrative Procedure Act. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

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

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 700 S. Clearwater Lane, Boise, ID 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 029. (RESERVED).

030. DEFINITIONS.

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

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

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. ()

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. ()

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. ()

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

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

03. Ambulatory Surgery Center (ASC). A facility providing medical services on an outpatient basis only. ()

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

05. Hospital. An acute care facility providing medical services on an inpatient and outpatient basis. ()

06. 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. ()

07. 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. ()

08. 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. ()

09. Payor. The legal entity responsible for paying medical benefits under Idaho's Workers' Compensation Law. ()

10. 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. ()

11. 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. ()

12. 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. ()

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY PHYSICIANS UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided by physicians under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by physicians. ()

02. Adoption of Standard for Physicians. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by physicians. ()

03. Conversion Factors. The following conversion factors shall be applied to the

fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Anesthesia	00000 - 09999	Anesthesia	\$60.05
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	\$140.00
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	\$113.52
Surgery - Group Four	10000 - 12999 20000 - 20615 29000 - 29799 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Integumentary System Musculoskeletal System Casts & Strapping Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	\$87.72
Radiology	70000 - 79999	Radiology	\$87.72
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	\$47.00
Medicine - Group Two	90800 - 92999 93000 - 93999 95000 - 96020 96040 - 96999 99000 - 99607	Psychiatry & Medicine Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures Assessments & Special Procedures E / M & Miscellaneous Services	\$68.50

()

04. Anesthesiology. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. ()

05. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions, using the methodology set forth in Section 56-136, Idaho Code; pursuant to Section 72-803, Idaho Code. ()

06. Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.03, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Section 034, below. ()

07. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: ()

a. Modifier 50: Additional fifty percent (50%) for bilateral procedure. ()

b. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. ()

c. Modifier 80: Twenty-five percent (25%) of coded procedure. ()

d. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. ()

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. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by hospitals and ambulatory surgery centers. ()

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. ()

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%). ()

b. Hospital Inpatient Services. The standard for determining the acceptable charge for inpatient services provided by hospitals, other than critical access and rehabilitation hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate for inpatient services is ten thousand dollars (\$10,000). Inpatient services that do not have a relative weight shall be paid at eighty-five percent (85%) of the reasonable charge; however, implantable hardware charges billed for services without an MS-DRG weight shall be reimbursed at the rate of actual cost plus fifty percent (50%). ()

c. Hospital Outpatient and Ambulatory Surgical Center (ASC) Services. The standard for determining the acceptable charge for outpatient services provided by hospitals (other than critical access and rehabilitation hospitals) and for services provided by ambulatory surgical centers is calculated by multiplying the base rate by the *Medicare Hospital Outpatient Prospective Payment System (OPPS)* APC weight *in effect on the first day of January of the current calendar year*. The base rate for hospital outpatient services is one hundred and thirty-eight dollars (\$138). The base rate for ASC services is *ninety* dollars (\$90). ()

i. If there is no weight listed for APC status codes A, B, C, D, E, F, G, H, K, L, M, Q, S, T, V, X, or Y, then reimbursement shall be seventy-five percent (75%) of the reasonable charge. ()

ii. Status code N items (other than implantable hardware) or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment. ()

iii. Two or more medical procedures with a status code T on the same claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status code T items paid at fifty percent (50%). ()

iv. Status code Q items *with an assigned APC weight* will not be discounted. ()

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. ()

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. ()

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. ()

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. ()

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. ()

03. Disputes. The Commission shall determine the acceptable charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Section 034 of this rule. ()

04. Adjustment of Hospital and ASC Base Rates. The Commission may periodically adjust the base rates set out in Subparagraphs 032.02.b. and 032.02.c. of this rule to reflect changes in inflation or market conditions. ()

033. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY OTHER PROVIDERS 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 providers other than physicians, hospitals or ASCs under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by providers other than physicians, hospitals or ASCs. ()

02. Adoption of Standard. The standard for determining the acceptable charge for providers other than physicians, hospitals or ambulatory surgery centers (ASCs) shall be the reasonable charge. ()

03. Disputes. The Commission shall determine the acceptable charge for medical services provided by providers other than physicians, hospitals and ASCs that are disputed based on all relevant evidence in accordance with the procedures set out in Section 034 of this rule. ()

034. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.

01. Authority. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule governing billing and payment requirements for medical services provided under the Workers' Compensation Law and the procedures for resolving disputes between payors and providers over those bills or payments. ()

02. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. ()

03. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with this Subsection 034.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 034.10 for that service. ()

a. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, for the year in which the service was performed and using current International Classification of Diseases (ICD) diagnostic coding, as well. ()

b. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. ()

c. If requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Benefits." Subsection 322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 034.04 and 034.06, below, shall not begin to run until the Payor receives the Report. ()

04. Prompt Payment. Unless the Payor denies liability for the claim or, pursuant to Subsection 034.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to any charge, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. ()

05. Partial Payment. If the Payor acknowledges liability for the claim and, pursuant to Subsection 034.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. ()

06. Preliminary Objections and Requests for Clarification. ()

a. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. ()

b. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. ()

c. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. ()

d. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 034.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. ()

07. Provider Reply to Preliminary Objection or Request for Clarification. ()

a. Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection or Request for Clarification. ()

b. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. ()

c. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. ()

08. Payor Shall Pay or Issue Final Objection. The Payor shall pay the Provider's bill in whole or in part or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. ()

09. Failure of Payor to Finally Object. Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. ()

10. Dispute Resolution Process. If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors, as referenced in Sections 031, 032 and 033 of this rule. If Provider's motion disputing CPT or MS-DRG coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate

Provider for costs and expenses associated with using the dispute resolution process. For motions filed by a Provider disputing items without CPT or MS-DRG codes, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order. ()

035. -- 999. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0210-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 306 through 316](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jane McClaran at 208-334-6042.

DATED this November 18, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: 208-334-6059
Fax: 208-334-5145

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

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

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed and two new chapters are being adopted to clarify each entity's rules. This new chapter, IDAPA 17.02.10 (Insurance Carriers), adopts rules governing insurance carriers which clarify terms and implement more comprehensive reporting requirements.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

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

2010.

DATED this 10th day of September, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0210-1001

IDAPA 17, TITLE 02, CHAPTER 10

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

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provisions of Sections 72-508, 72-301 and 72-304, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers." These rules shall apply to all insurance companies securing compensation under the Workers' Compensation Law. ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

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

01. 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. ()

02. Indemnity Claim. Any claim made for the payment of indemnity benefits. ()

011. RULE 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. ()

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: ()

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; ()

b. The latest audited financial statement of said carrier; ()

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

d. The name and address of the Idaho resident licensed adjuster or adjusters with authority to make compensation payments and adjustments of claims arising under the Act. If more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided; ()

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. ()

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. ()

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____. ()

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. ()

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

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; ()

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 ()

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. ()

012. 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: ()

01. Maintain Statutory Security Deposits with the State Treasurer. ()

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. ()

b. In addition to the security required in Subsection 012.01.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 011.02.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. ()

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. ()

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. ()

03. Maintain Resident Idaho Office. Each insurance carrier shall maintain an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act.()

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. ()

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. ()

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 public information section of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, telephone (208)334-6000. ()

05. Comply with Industrial Commission Reporting Requirements. Each insurance carrier shall file such reports as the Industrial Commission may require concerning matters under the Workers' Compensation Law. ()

06. Report Proof of Coverage. ()

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, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho

83720-0041; telephone (208) 334-6000. ()

b. As an alternative to Subsection 012.06.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. ()

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 and transaction standards is available upon request from the Employer Compliance Bureau, Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

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. ()

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. ()

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. ()

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. ()

10. 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. ()

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. ()

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. ()

c. The report shall be submitted on or in a format that is substantially the same as Form IC36A, "Report of Outstanding Awards – Insurance Carriers" which follows this chapter as Appendix B. 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. ()

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. ()

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. ()

11. 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. ()

013. -- 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: ()

01. Idaho Office. ()

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. ()

b. The insurance carrier shall authorize a member of its staff or a resident licensed 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: ()

i. Investigate and adjust all claims for compensation; ()

ii. Pay all compensation benefits due; ()

iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; ()

iv. Enter into compensation agreements and lump sum settlements with Claimants; and ()

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. ()

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. ()

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: ()

a. First Report of Injury and Claim for Benefits; ()

b. Copies of bills for medical care; ()

c. Copy of lost-time computations, if applicable; ()

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; ()

e. Employer's Supplemental Report; and ()

f. Medical reports. ()

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

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. ()

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. ()

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

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

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. ()

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. ()

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. ()

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. ()

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 check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. ()

09. Prompt Claim Servicing. Prompt claim servicing includes, but is not limited to: ()

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

b. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. ()

10. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. ()

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. ()

052. -- 270. (RESERVED).

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, the state insurance fund and every insurance carrier authorized to transact workers' compensation insurance in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. ()

01. Filing. The report of indemnity payments shall be filed with the Industrial

Commission simultaneously with the first Semi-Annual Premium Tax Report which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. ()

02. Form. The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," contained in Appendix C at the end of this chapter. ()

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. ()

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 each year. ()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. ()

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. ()

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. ()

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). ()

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. ()

272. -- 999. (RESERVED).

APPENDIX A

IC52 ELECTION OF COVERAGE

Check the appropriate box	
_ Election	_ Revocation of Election

The undersigned hereby notifies the Industrial Commission of the following:

_ Household domestic service

- Casual employment
- Employment of outworkers
- Employment of members of an employer's family dwelling in his household. (Applies only to sole-proprietorships)
- Employment as the owner of a sole proprietorship
- Employment of a working member of a partnership or a limited liability company (Circle either partnership or Limited Liability Company; if the election applies only to certain partners/members, name the covered partners/members.)
- Employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof (If the election applies only to certain corporate officers, name the covered officers)
- Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States
- Pilots of agricultural spraying or dusting planes
- Associate real estate brokers and real estate salesmen paid solely by commission
- Volunteer ski patrollers
- Officials of athletic contests involving secondary schools

(Name of Insurance Company)

Policy Number _____

Insured Name _____

Effective Date of Election/Revocation _____

(Signature of authorized representative)

(Employer's signature)

APPENDIX B

IC36A -- REPORT OF OUTSTANDING AWARDS – INSURANCE CARRIERS

(Name of Carrier) _____							
Calendar Year: _____							
For Calendar Quarter Ending: qMarch qJune qSeptember qDecember							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Date of Injury	Claimant Name (as shown on First Report of Injury)	Type of Claim	Total Awards	Compensation Paid This Report Period	Total Compensation Paid to Date	Adjustments	Unpaid Balance [(4) minus (5)]
TOTALS							

Send Original to: Fiscal Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041

I, the undersigned corporate officer of the above named insurance carrier, do hereby certify that this report is complete and accurate to the best of my knowledge.

Corporate _____ **Officer's** _____ **Signature:** _____

Title: _____

Printed Name: _____

Date: _____

Name and Title of Preparer: _____

Company: _____

Address: _____

Telephone: _____ **E-Mail** _____ **Address:** _____

Page _____ Of _____

APPENDIX C
IC327 REPORT OF INDEMNITY PAYMENTS
EXHIBIT A to SEMI-ANNUAL PREMIUM TAX REPORT

Reporting Entity Name: _____

Reporting Period: January 1 - June 30, (Year) _____

July 1 - December (Year) _____
31, _____

Date of Preparation: _____

1. Total Claims: _____

2. Total Number of Indemnity Claims: _____

3. Payments Made During the Reporting Period on Indemnity Claims: _____

a. Total Amount of All Payments (including Medical): _____

b. Total Amount of All Indemnity Payments: _____

Certification

State of _____)

_____) ss.

County of _____)

I, _____, being first duly sworn on oath, state that I have read the foregoing report which sets forth certain information relating to indemnity payments made during the reporting period, that I know the contents, and that I certify the report is true and correct to the best of my knowledge.

Signature of Preparer

Title of Preparer

SUBSCRIBED AND SWORN to before me on this ____ day of _____,
_____.

Notary Public for

_____.

Residing

at _____.

My term expires: _____

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM

59.01.02 - ELIGIBILITY RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0102-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 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. Correction of statutory cross-reference and clarification. Correct statutory cross-reference in Rule 005.08 and clarify wording in Rule 113 regarding definition of “normally works twenty hours...”. Clarify Rule 122 regarding member on leave of absence without pay.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 221 through 223.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 25th of October, 2010.

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 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 August 18, 2010.

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

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

Correction of statutory cross-reference and clarification. Correct statutory cross-reference in Rule 005.08 and clarify wording in Rule 113 regarding definition of “normally works twenty hours...” Clarify Rule 122 regarding member on leave of absence without pay.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because 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: N/A

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 August 25, 2010.

DATED this 29th day of June, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0102-1001

005. DEFINITIONS (RULE 5).

The following definitions are supplemental to those provided by Section 59-1302, Idaho Code. (1-1-94)

01. Board. “Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

02. Compensation. “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. (1-1-94)

03. Date of Retirement. “Date of retirement” means the effective date on which a retirement allowance becomes payable. (1-1-94)

04. Employee. “Employee” means a person as defined in Section 59-1302(14), Idaho Code. (1-1-94)

05. Employment. “Employment” as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member’s date of hire to the member’s succeeding date of separation from that employer. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. (1-1-94)

06. Firefighters' Retirement Fund. “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. (1-1-94)

07. General Member. “General member” is a PERSI member not classified as a police officer, firefighter, or paid firefighter. (1-1-94)

08. Paid Firefighter. “Paid firefighter” includes a former FRF members and paid firefighters as defined by Section 59-13591(f), Idaho Code, hired October 1, 1980, and thereafter. ~~(1-1-94)~~()

09. Police Officer. “Police officer” means an employee who is serving in a position designated by Section 59-1303(3), Idaho Code, or in a position so designated by the Retirement Board as provided by Section 59-1303(4), Idaho Code. (1-1-94)

10. Primary Employer. The primary employer is the employer from whom the

employee receives the highest aggregate salary per month. (1-1-94)

11. Public Employee Retirement System of Idaho. “Public Employee Retirement System of Idaho” or “PERSI” is the retirement system created by Chapter 13, Title 59, Idaho Code. (1-1-94)

12. Retirement Board. “Retirement Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, and of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

13. Same Position. “Same position” as set forth in Section 59-1303(7), Idaho Code, means the same job classification or position title including continued employment in any revised job classification or new position title evolving from that same position as the result of personnel reclassification procedures provided the continued employment remains within the same state agency or within the same department of a political subdivision. (1-1-94)

14. Surviving Spouse. “Surviving spouse” is a person as defined in Section 15-2-802, Idaho Code. (1-1-94)

15. Teacher. “Teacher” is defined as a school employee who is required to be certified. (1-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

113. DEFINITION OF NORMALLY WORKS TWENTY HOURS (RULE 113).

If a person works twenty (20) hours or more per week ~~over~~ **for more than** one-half (1/2) of the weeks during the period of employment being considered, then the person meets the requirements of Section 59-1302(14)(A)(a), Idaho Code (“normally works twenty (20) hours or more per week”), and shall be considered an employee if the person meets the other requirements of Section 59-1302(14), Idaho Code. Statutory References: Section 59-1302(14)(A)(a).

~~(1-1-94)~~()

(BREAK IN CONTINUITY OF SECTIONS)

122. LEAVE OF ABSENCE (RULE 122).

A member is ~~an inactive member~~ ineligible to contribute and receive membership service credit while on leave of absence without pay or while on leave of absence with less than one-half (1/2) pay, unless the absence is occasioned by a worker’s compensation claim approved by a surety. An active member separated from employment under conditions where both the member and the employer plan a later return to employment should be placed on leave of absence without pay during the planned period of absence.

~~(1-1-94)~~()

01. Employer and Employee Contributions -- Leave of Absence. During the leave of absence without pay, employer and employee contributions cease. If the member is on a leave of absence as a result of an approved worker's compensation claim, employer and employee contributions are due and payable on any salary paid to the member. The member is entitled to a month of membership service credit for each month the member remains on leave of absence as a result of an approved worker's compensation claim and receives salary in addition to income benefits. (1-1-94)

02. Documentation of Leave of Absence. The employer shall provide PERSI with documentation, on a form provided by PERSI, of a leave of absence to clarify the member's status and retirement benefit entitlement. (1-1-94)

03. Status of Employee on Leave of Absence. An employee placed on a leave of absence by an employer remains in an employee status and is ineligible for payment of any separation benefits or for payment of a service, early, disability, or vested retirement allowance. If a member on leave of absence without pay terminates employment without returning to work, the leave without pay status is negated. (5-8-09)

04. Leave of Absence -- Effect on Benefit Enhancement. An employee shall not be placed on a leave of absence without pay prior to the effective date of a benefit enhancement and then return to work after the effective date of the benefit enhancement for the purpose of qualifying for the benefit enhancement. An employee placed on unpaid leave of absence prior to the date of the benefit enhancement who returns to work after the effective date of the benefit enhancement and subsequently applies for retirement shall include with the application for retirement, certification from the employer that the leave of absence was not granted for the purpose of allowing the person to qualify for the benefit enhancement. (1-1-94)

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM

59.01.03 - CONTRIBUTION RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0103-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Idaho Code section 59-1322(1) requires the Retirement Board establish contribution rates to fund benefits, within certain constraints. The Retirement Board has determined based on actuarial values of reserves and liabilities that it is necessary to increase the contributions necessary to fund the level of benefits authorized by the plan. Increase contribution rates by a total of 5.28%. The increase is to be phased in over a 3 year period. These increases will affect employees and employers, since, by law, contributions are allocated 37.5% to employees and 62.5% to employers.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. The only amendment is to the effective date of the contribution rate increases, which now begin July 1, 2012. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 224 through 227.](#)

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:

Employer contribution rates will increase by a total of 3.26% (of payroll) over a three-year period, beginning July 1, 2012. This will affect the general fund as the state is a PERSI employer, to the extent that an agency's PERSI employer fund contributions are made from general fund dollars.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 7th of December, 2010.

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 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 August 18, 2010.

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

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

Section 59-1322(1), Idaho Code, requires the Retirement Board to establish contribution rates to fund benefits, within certain constraints. The Retirement Board has determined, based on actuarial values of reserves and liabilities, that it is necessary to increase the contributions necessary to fund the level of benefits authorized by the plan. The contribution rates will be increased by a total of 5.28%. The increase is to be phased in over a three-year period, beginning July 1, 2011. These increases will affect employees and employers, since, by law, contributions are allocated 37.5% to employees and 62.5% to employers.

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

Increase contribution rates by a total of 5.28%. The increase is to be phased in over a three-year period, beginning July 1, 2011. These increases will affect employees and employers, since, by law, contributions are allocated 37.5% to employees and 62.5% to employers.

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:

Employer contribution rates will increase by a total of 3.26% (of payroll) over a three-year period, beginning July 1, 2011. This will affect the general fund as the state is a PERSI employer, to the extent that an agency's PERSI employer fund contributions are made from general fund dollars.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), 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: N/A

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 August 25, 2010.

DATED this 29th day of June, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0103-1001

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, 2012. Beginning July 1, 2012, the rate shall be eleven point thirty-two percent (11.32%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be twelve point twenty-four percent (12.24%) of payroll through June 30, 2014. Beginning July 1, 2014, 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) (5-8-09)(_____)

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:

Option I And II Firefighters	
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 <u>through June 30, 2012. Beginning July 1, 2012, the rate shall be eleven point sixty-six percent (11.66%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be thirteen point ninety-nine percent (13.99%) of payroll</u> 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:	Seventeen point twenty-four percent (17.24%) until next determined by the Board.
TOTAL Contribution:	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 <u>through June 30, 2012. Beginning July 1, 2012, the rate shall be thirty seven point fifty-five percent (37.55%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be thirty eight point forty-seven percent (38.47%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be thirty nine point eighty-eight percent (39.88%) of payroll</u> until next determined by the Board.

(5-8-09)()

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:

Class D Firefighters	
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 <u>through June 30, 2012. Beginning July 1, 2012, the rate shall be eleven point sixty-six percent (11.66%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be thirteen point ninety-nine percent (13.99%) of payroll</u> until next determined by the Board.
Excess Merger Costs:	Seventeen point twenty-four percent (17.24%) until next determined by the Board.
TOTAL Contribution:	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 <u>through June 30, 2012. Beginning July 1, 2012, the rate shall be twenty eight point nine percent (28.9%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be twenty nine point eighty-two percent (29.82%) of payroll through June 30, 2014. Beginning July 1, 2014, the rate shall be thirty one point twenty-three percent (31.23%) of payroll</u> until next determined by the Board.

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, 2012. Beginning July 1, 2012, the rate shall be eleven point sixty-six percent (11.66%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be twelve point fifty-eight percent (12.58%) of payroll through June 30, 2014. Beginning July 1, 2014, 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) ~~(5-8-09)~~(____)

(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, 2012. Beginning July 1, 2012, the rate shall be six point seventy-nine percent (6.79%) of salary through June 30, 2013. Beginning July 1, 2013, the rate shall be seven point thirty-four percent (7.34%) of salary through June 30, 2014. Beginning July 1, 2014, 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) ~~(5-8-09)~~(____)

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, 2012. Beginning July 1, 2012, the rate shall be eight point thirty-two percent (8.32%) of salary through June 30, 2013. Beginning July 1, 2013, the rate shall be eight point ninety-nine percent (8.99%) of salary through June 30, 2014. Beginning July 1, 2014, 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) ~~(5-8-09)~~(____)

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM

59.01.04 - DISABILITY RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0104-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Amend rules 06, 201, 205 and 300 to implement HB 458, passed in the 2010 session, which created Section 59-1354A, Idaho Code regarding a disability retiree return to work. Technical correction to rule 100. Delete rule 102 (duplicative of rule 300).

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 228 and 229.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 25th day of October, 2010.

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 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 August 18, 2010.

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

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

Amend rules 006, 201, 205 and 300 to implement HB 458, passed in the 2010 session, which created Section 59-1354A, Idaho Code regarding a disability retiree return to work. Technical correction to rule 100. Delete rule 102 (duplicative of rule 300).

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because 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: N/A

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 August 25, 2010.

DATED this 29th day of June, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0104-1001

006. DEFINITIONS (RULE 6).

PERSI adopts through incorporation by reference as if set forth fully herein all of the definitions listed in IDAPA 59.01.02, Section 005, "Eligibility Rules of the Public Employee Retirement System of Idaho". The following definitions are supplemental. (4-5-00)()

01. Applicant. "Applicant" means an applicant for disability retirement under Section 59-1352, Idaho Code, or an individual requesting resumption of a disability retirement allowance under Section 59-1354A, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL RULE (RULE 100).

Only *active* members of PERSI with five (5) years of credited service are eligible for disability retirement except as provided in Section 59-1352(2), Idaho Code. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

~~**102. DISABLED PRIOR TO SEPARATION (RULE 102).**~~

~~The applicant must demonstrate that, before he separated from service, he was disabled under the applicable disability standard. In other words, the applicant must demonstrate that, while an active member, he was disabled under the applicable standard.~~ (4-5-00)

~~**1032. -- 199. (RESERVED).**~~

(BREAK IN CONTINUITY OF SECTIONS)

201. INITIAL APPLICATION REVIEW ~~—SERVICE REQUIREMENTS~~ (RULE 201).

Applications will first be reviewed to determine whether the applicant meets *service* eligibility requirements. If *service all* eligibility requirements are met, the application will proceed to disability assessment review. If *service all eligibility* requirements are not met, the applicant will be notified in writing. ~~Eligibility determinations are subject to subsequent review, audit and adjustment.~~ (4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

205. DELEGATION (RULE 205).

PERSI may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term “PERSI” includes those third parties. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the board may delegate its authority under Section 59-1354A, Idaho Code, to a third party. Where such delegation has been made, the term “Board” includes those third parties.
(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

300. BURDEN ON APPLICANT (RULE 300).

Disability retirement is only available to active members. Applicant must demonstrate that, on or before applicant’s last day of employment, he was disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the member must demonstrate that he could not successfully return to work because of the same disability on which his disability retirement was based.
(4-5-00)()

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM
59.01.05 - SEPARATION FROM SERVICE RULES FOR THE PUBLIC
EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0105-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Delete rule 104 allowing for pre-tax payroll deduction to pay for reinstatement of prior service. Reinstatement could be made pre-tax through a rollover from a qualified plan and can be made with after tax dollars.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 230 and 231.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 25th day of October, 2010.

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 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 August 18, 2010.

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

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

Delete rule 104 allowing for pre-tax payroll deduction to pay for reinstatement of prior service. Reinstatement could be made pre-tax through a rollover from a qualified plan and can be made with after tax dollars.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because 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: N/A

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 August 25, 2010.

DATED this 29th day of June, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0105-1001

~~104. EMPLOYER "PICKUP" OF REINSTATEMENT PAYMENTS (RULE 104).~~

~~**01. Periodic Pre-Tax Payments.** Payroll deduction payments may be made pre-tax under the employer pickup provision referenced in Section 59-1332, Idaho Code, only if the member authorizes an irrevocable payroll deduction. Once executed, the deduction cannot be changed or revoked. If the member terminates employment the member may continue making payments directly to PERSI but they will not be considered pre-tax until they are picked up by a subsequent irrevocable payroll deduction, approved by PERSI, and executed with another PERSI employer. (3-30-01)~~

~~**02. Multiple Irrevocable Payroll Deductions.** Members who have previously authorized an irrevocable payroll deduction for purposes of making periodic pre-tax payments to reinstate previous credited service as provided in Section 59-1360, Idaho Code, may increase repayments by executing additional irrevocable payroll deductions to supplement the previously authorized deductions so long as the previous irrevocable deductions are not modified or terminated. (3-30-01)~~

1054. IN-SERVICE TRANSFERS TO REINSTATE SERVICE (RULE 1054).

To the extent permitted by federal law, and in accordance with any regulation or other guidance issued by the Internal Revenue Service, an active member may transfer funds from a 401(k), a 403(b), or an eligible 457(b) plan, in which they are currently eligible to participate, to the Base Plan for purposes of buying back service previously forfeited due to receiving a separation benefit, purchasing service related to eligible waiting periods, or purchasing service for periods of delinquent contributions. (5-3-03)

1065. -- 123. (RESERVED).

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM

59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0106-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Clarification of rule 162 (Table C) to reflect the factors applicable to those persons who retired before July 1, 1995 (the last time the factors were changed). Delete rule 163. Add a new rule 557 to incorporate definitions for purposes of the federal Pension Protection Act which provides that PERSI pays insurance premiums from retirement allowance for retired public safety officers (which is exempt from income tax up to \$3,000).

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 232 through 240.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, 287-9271.

DATED this 25th day of October, 2010.

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 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 August 18, 2010.

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

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

Clarification of rule 162 (Table C) to reflect the factors applicable to those persons who retired before July 1, 1995, the last time the factors were changed; delete rule 163; and adds a new rule 557 to incorporate definitions for purposes of the federal Pension Protection Act which provides that PERSI pays insurance premiums from retirement allowance for retired public safety officers, which is exempt from income tax up to \$3,000.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, 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: N/A

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 August 25,

2010.

DATED this 29th day of June, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0106-1001

162. ACTUARIAL ASSUMPTION TABLES (RULE 162).

The actuarial tables used for determining optional and early retirement benefits are as follows:

TABLE A -- Page 1
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
If the date of last contribution is prior to 10/1/92

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.770	.690	.610	.530	.450
1	.998	.968	.938	.908	.878	.843	.763	.683	.603	.523	
2	.995	.965	.935	.905	.875	.837	.757	.677	.597	.517	
3	.993	.963	.933	.903	.873	.830	.750	.670	.590	.510	
4	.990	.960	.930	.900	.870	.823	.743	.663	.583	.503	
5	.988	.958	.928	.898	.868	.817	.737	.657	.577	.497	
6	.985	.955	.925	.895	.865	.810	.730	.650	.570	.490	
7	.983	.953	.923	.893	.863	.803	.723	.643	.563	.483	
8	.980	.950	.920	.890	.860	.797	.717	.637	.557	.477	
9	.978	.948	.918	.888	.858	.790	.710	.630	.550	.470	
10	.975	.945	.915	.885	.855	.783	.703	.623	.543	.463	
11	.973	.943	.913	.883	.853	.777	.697	.617	.537	.457	

First sixty months reduction: .2500% Next sixty months reduction: 0.6667% (1-1-94)

TABLE A -- Page 2
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
If the date of last contribution is on or after 10/1/92 but prior to 10/1/93

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.777	.705	.632	.560	.487
1	.998	.968	.938	.908	.878	.844	.771	.699	.626	.554	
2	.995	.965	.935	.905	.875	.838	.765	.693	.620	.548	
3	.993	.963	.933	.903	.873	.832	.759	.687	.614	.542	
4	.990	.960	.930	.900	.870	.826	.753	.681	.608	.536	
5	.988	.958	.928	.898	.868	.820	.747	.675	.602	.530	
6	.985	.955	.925	.895	.865	.814	.741	.669	.596	.524	
7	.983	.953	.923	.893	.863	.808	.735	.663	.590	.518	
8	.980	.950	.920	.890	.860	.802	.729	.657	.584	.512	
9	.978	.948	.918	.888	.858	.796	.723	.651	.578	.506	
10	.975	.945	.915	.885	.855	.790	.717	.645	.572	.500	
11	.973	.943	.913	.883	.853	.784	.711	.639	.566	.494	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.6042% (3-20-97)

TABLE A -- Page 3
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
If the date of last contribution is on or after 10/1/93 but prior to 10/1/94

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.785	.720	.655	.590	.525
1	.998	.968	.938	.908	.878	.845	.780	.715	.650	.585	
2	.995	.965	.935	.905	.875	.839	.774	.709	.644	.579	
3	.993	.963	.933	.903	.873	.834	.769	.704	.639	.574	
4	.990	.960	.930	.900	.870	.828	.763	.698	.633	.568	
5	.988	.958	.928	.898	.868	.823	.758	.693	.628	.563	
6	.985	.955	.925	.895	.865	.817	.752	.687	.622	.557	
7	.983	.953	.923	.893	.863	.812	.747	.682	.617	.552	
8	.980	.950	.920	.890	.860	.807	.742	.677	.612	.547	
9	.978	.948	.918	.888	.858	.801	.736	.671	.606	.541	
10	.975	.945	.915	.885	.855	.796	.731	.666	.601	.536	
11	.973	.943	.913	.883	.853	.790	.725	.660	.595	.530	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.5417% (3-20-97)

TABLE A -- Page 4
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
EARLY RETIREMENT FACTORS
Date of last contribution is on or after 10/1/94 or later

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.0	.970	.940	.910	.880	.850	.792	.735	.677	.620	.562
1	.998	.968	.938	.908	.878	.845	.788	.730	.673	.615	
2	.995	.965	.935	.905	.875	.840	.783	.725	.668	.610	
3	.993	.963	.933	.903	.873	.836	.778	.721	.663	.606	
4	.990	.960	.930	.900	.870	.831	.773	.716	.658	.601	
5	.988	.958	.928	.898	.868	.826	.769	.711	.654	.596	
6	.985	.955	.925	.895	.865	.821	.764	.706	.649	.591	
7	.983	.953	.923	.893	.863	.816	.759	.701	.644	.586	
8	.980	.950	.920	.890	.860	.812	.754	.697	.639	.582	
9	.978	.948	.918	.888	.858	.807	.749	.692	.634	.577	
10	.975	.945	.915	.885	.855	.802	.745	.687	.630	.572	
11	.973	.943	.913	.883	.853	.797	.740	.682	.625	.567	

(3-20-97)

TABLE B -- Page 1
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH
BENEFITS
Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age
Death Benefits: Additional Years and Months Until Member Would Qualify
for an Unreduced Service Retirement Allowance
AFTER Applying Table A factors

Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.923	.853	.787	.727	.671	.620	.572	.528	.488	.451
1	.993	.917	.847	.782	.722	.667	.616	.568	.525	.485	
2	.987	.911	.841	.777	.717	.662	.612	.565	.521	.481	
3	.980	.905	.836	.772	.713	.658	.608	.561	.518	.478	
4	.974	.899	.830	.767	.708	.654	.604	.557	.515	.475	
5	.967	.893	.825	.762	.703	.649	.600	.554	.511	.472	

Months	Years									
6	.961	.887	.819	.756	.699	.645	.596	.550	.508	.469
7	.955	.881	.814	.751	.694	.641	.592	.546	.504	.466
8	.948	.876	.808	.746	.689	.636	.588	.543	.501	.463
9	.942	.870	.803	.742	.685	.632	.584	.539	.498	.460
10	.936	.864	.798	.737	.680	.628	.580	.535	.494	.457
11	.930	.858	.793	.732	.676	.624	.576	.532	.491	.454

(1-1-94)

TABLE B -- Page 2
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH
BENEFITS

Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age
Death Benefits: Additional Years and Months Until Member Would Qualify
for an Unreduced Service Retirement Allowance
AFTER Applying Table A factors

Months	Years										
	10	11	12	13	14	15	16	17	18	19	20
0	.451	.416	.384	.355	.327	.302	.279	.258	.238	.220	.203
1	.448	.413	.382	.352	.325	.300	.277	.256	.236	.218	
2	.445	.411	.379	.350	.323	.298	.276	.254	.235	.217	
3	.442	.408	.377	.348	.321	.296	.274	.253	.233	.215	
4	.439	.405	.374	.345	.319	.294	.272	.251	.232	.214	
5	.436	.402	.372	.343	.317	.293	.270	.249	.230	.213	
6	.433	.400	.369	.341	.315	.291	.268	.248	.229	.211	
7	.430	.397	.367	.339	.313	.289	.267	.246	.227	.210	
8	.427	.394	.364	.336	.311	.287	.265	.244	.226	.208	
9	.424	.392	.362	.334	.308	.285	.263	.243	.224	.207	
10	.422	.389	.359	.332	.306	.283	.261	.241	.223	.206	
11	.419	.387	.357	.330	.304	.281	.260	.240	.221	.204	

(1-1-94)

TABLE B -- Page 3
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH
BENEFITS

Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age

*Death Benefits: Additional Years and Months Until Member Would Qualify
for an Unreduced Service Retirement Allowance
AFTER Applying Table A Factors*

	Months		Years			
	20	21	22	23	24	25
0	.203	.187	.173	.160	.148	.136
1	.202	.186	.172	.159	.147	.135
2	.200	.185	.171	.158	.146	.134
3	.199	.184	.170	.157	.145	.134
4	.198	.183	.169	.156	.144	.133
5	.196	.181	.167	.155	.143	.132
6	.195	.180	.166	.154	.142	.131
7	.194	.179	.165	.153	.141	.130
8	.192	.178	.164	.152	.140	.129
9	.191	.177	.163	.151	.139	.128
10	.190	.175	.162	.150	.138	.127
11	.189	.174	.161	.149	.137	.127

(1-1-94)

TABLE C -- Page 1
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
CONTINGENT ANNUITANT FACTORS
For persons retiring before July 1, 1995

	<u>Age Difference in Years</u>	<u>Factors</u>	
		<u>Option 1</u>	<u>Option 2</u>
	<u>15 *</u>	<u>0.600</u>	<u>0.750</u>
	<u>14</u>	<u>0.610</u>	<u>0.758</u>
	<u>13</u>	<u>0.621</u>	<u>0.766</u>
	<u>12</u>	<u>0.631</u>	<u>0.775</u>
	<u>11</u>	<u>0.642</u>	<u>0.782</u>
<u>Member</u>	<u>10</u>	<u>0.652</u>	<u>0.789</u>
<u>Older</u>	<u>9</u>	<u>0.663</u>	<u>0.797</u>
<u>Than</u>	<u>8</u>	<u>0.674</u>	<u>0.804</u>
<u>Contingent Annuitant</u>	<u>7</u>	<u>0.685</u>	<u>0.812</u>
	<u>6</u>	<u>0.697</u>	<u>0.821</u>
	<u>5</u>	<u>0.708</u>	<u>0.830</u>

	<u>Age Difference in Years</u>	<u>Factors</u>	
	<u>4</u>	<u>0.720</u>	<u>0.838</u>
	<u>3</u>	<u>0.732</u>	<u>0.846</u>
	<u>2</u>	<u>0.746</u>	<u>0.855</u>
	<u>1</u>	<u>0.762</u>	<u>0.865</u>
	<u>0</u>	<u>0.780</u>	<u>0.876</u>
	<u>1</u>	<u>0.799</u>	<u>0.887</u>
	<u>2</u>	<u>0.823</u>	<u>0.902</u>
	<u>3</u>	<u>0.836</u>	<u>0.910</u>
	<u>4</u>	<u>0.847</u>	<u>0.918</u>
	<u>5</u>	<u>0.856</u>	<u>0.924</u>
<u>Member</u>	<u>6</u>	<u>0.865</u>	<u>0.930</u>
<u>Younger</u>	<u>7</u>	<u>0.873</u>	<u>0.935</u>
<u>Than</u>	<u>8</u>	<u>0.881</u>	<u>0.940</u>
<u>Contingent Annuitant</u>	<u>9</u>	<u>0.888</u>	<u>0.944</u>
	<u>10</u>	<u>0.897</u>	<u>0.949</u>
	<u>11</u>	<u>0.906</u>	<u>0.955</u>
	<u>12</u>	<u>0.916</u>	<u>0.961</u>
	<u>13</u>	<u>0.926</u>	<u>0.967</u>
	<u>14</u>	<u>0.934</u>	<u>0.969</u>
	<u>15 or more</u>	<u>0.940</u>	<u>0.970</u>

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. ()

TABLE C -- Page 2
PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
CONTINGENT ANNUITANT FACTORS
For persons retiring on or after July 1, 1995

	Age Difference in Years	Factors	
		Option 1	Option 2
	15 *	0.690	0.810
	14	0.700	0.816
	13	0.710	0.822
	12	0.720	0.828

	Age Difference in Years	Factors	
	11	0.730	0.834
Member	10	0.735	0.840
Older	9	0.740	0.846
Than	8	0.745	0.852
Contingent Annuitant	7	0.750	0.858
	6	0.755	0.864
	5	0.760	0.870
	4	0.765	0.876
	3	0.770	0.882
	2	0.785	0.888
	1	0.800	0.894
	0	0.815	0.900
	1	0.835	0.915
	2	0.855	0.925
	3	0.875	0.935
	4	0.890	0.945
	5	0.900	0.950
Member	6	0.910	0.955
Younger	7	0.920	0.960
Than	8	0.930	0.965
Contingent Annuitant	9	0.940	0.967
	10	0.944	0.969
	11	0.946	0.971
	12	0.948	0.973
	13	0.950	0.975
	14	0.952	0.977
	15 or more	0.954	0.979

*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. (Amended 96) ~~(3-20-97)~~()

~~**163. POST RETIREMENT COST OF LIVING ADJUSTMENTS -- FIREFIGHTERS' RETIREMENT FUND (RULE 163).**~~

~~The Board shall annually determine the post retirement cost of living adjustment (COLA) for the~~

~~firefighters' retirement fund pursuant to Section 72-1471, Idaho Code. The Board shall annually adopt the COLA at the November Board meeting with an effective date of January 1 of the next year.~~

~~Statutory References: Section 72-1471, Idaho Code.~~

~~(3-20-97)~~

~~1643.~~ -- 174. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

557. PENSION PROTECTION ACT DEFINITIONS (RULE 557).

Solely for purposes of the implementation by PERSI of section 402(l) of the Internal Revenue Code, the following definitions shall apply: ()

01. Chaplain. "Chaplain" means any individual serving as an officially recognized or designated member of a legally organized volunteer fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency. ()

02. Eligible Retired Public Safety Officer. "Eligible retired public safety officer" means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions are made. ()

03. Normal Retirement Age. "Normal Retirement Age" means the member's age at the time that the member is eligible to retire with an unreduced benefit. ()

04. Public Safety Officer. "Public Safety Officer" means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew. ()

~~5578.~~ -- 575. (RESERVED).