

HEALTH & WELFARE COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2014 Legislative Session

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16.03.04 - Rules Governing the Food Stamp Program in Idaho

Docket No. 16-0304-13012

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1301
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **November 1, 2013**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-203, Idaho Code; also 7 CFR, Part 273.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

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 proposed changes will:

1. Revise rules to exempt federal income tax refunds from resource limits for up to twelve (12) months from the time of receipt as a liquid resource.
2. Allow a standard medical expense deduction for qualifying individuals who can show they have greater than \$35 in allowable medical expenses. This change will streamline the application and recertification process for individuals, especially for vulnerable populations. The change also will result in fewer calculation errors when determining food stamp benefits.
3. Revise rules to conform to federal regulations for changes on which the Department must act. This rule change will allow the Department flexibility to select options allowed under federal regulation when calculating expense changes used for food stamp benefits.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is necessary in order to comply with deadlines in amendments to 7 CFR, Part 273. Also, these rule changes confer a benefit by simplifying eligibility requirements for participants.

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

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 or any other funds related to this rulemaking.

NOTE: The USDA Food and Nutrition Services require that the Department demonstrate cost neutrality prior to implementing the change regarding the medical expense deduction.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible due to the fact that this rulemaking is temporary and is being done to bring this chapter into compliance 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 Kristin Matthews at (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 29th day of August, 2013.

Tamara Prisock
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LSO Rules Analysis Memo

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE
FOR DOCKET NO. 16-0304-1301**

221. DETERMINATION OF HOUSEHOLD COMPOSITION.

Household composition must be determined at application, a ~~six-month-or~~ twelve-month contact, recertification, and when acting on a reported change in household members ~~would result in an~~

increase in the food stamp benefits

~~(3-29-12)~~(11-1-13)T

(BREAK IN CONTINUITY OF SECTIONS)

382. RESOURCES EXCLUDED BY FEDERAL LAW.

Resources listed in Section 382 are excluded by Federal law: (3-15-02)

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

02. P.L. 92-203. The Alaska Native Claims Settlement Act. (6-1-94)

03. P.L. 93-134 as Amended by P.L. 103-66. Effective January 1, 1994, interest of individual Indians in trust or restricted lands. (6-1-94)

04. P.L. 93-288 as Amended by P.L. 100-707. Payments from Disaster Relief and Emergency Assistance. (6-1-94)

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

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

07. P.L. 94-189. The Sac and Fox Indian Claims Agreement. (6-1-94)

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

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

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

11. P.L. 97-403. Payments to the Turtle Mountain Band of Chippewas, Arizona. (6-1-94)

12. P.L. 97-408. Payments to the Blackfeet, Gros Ventre and Asiniboine Tribes, Montana and the Papago Tribe, Arizona. (6-1-94)

13. P.L. 98-64 and P.L. 97-365. Up to two thousand dollars (\$2,000) of any per capita payment, and any purchases made with such payment, from funds held in trust by the Secretary of the Interior. (6-1-94)

14. P.L. 98-123. Funds awarded to members of the Red Lake Band of Chippewa Indians. (6-1-94)

15. **P.L. 98-500.** Funds provided to heirs of deceased Indians under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of two thousand dollars (\$2,000). (6-1-94)
16. **P.L. 99-264.** Payments to the White Earth Band of Chippewa Indian Tribe, Michigan. (6-1-94)
17. **P.L. 99-346.** Payments to the Saginaw Chippewa Indian Tribe, Michigan. (6-1-94)
18. **P.L. 99-498 and P.L. 102-523 Student Loans.** Financial assistance funded in whole or in part under Title IV of the Higher Education Act. (6-1-94)
19. **P.L. 101-41.** Payments to the Puyallup Tribe of Indians, Washington. (6-1-94)
20. **P.L. 101-277.** Payments to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida and the Independent Seminole Indians of Florida. (6-1-94)
21. **P.L. 101-426.** Payments from the Radiation Exposure Compensation Act. (6-1-94)
22. **P.L. 102-237.** Resources of any mixed household member who gets TAFI or SSI. (7-1-98)
23. **P.L. 103-286.** Effective 8-1-94, payments made to victims of Nazi persecution. (1-1-95)
24. **P.L. 103-436.** Payments to the Confederated Tribes of the Colville Reservation for the Grand Coulee Dam Settlement. (7-1-97)
25. **P.L. 104-204.** Payments to children with spina bifida born to Vietnam veterans. (7-1-99)
26. **Civil Liberties Act of 1988.** Restitution payments to persons of Japanese ancestry who were evacuated, relocated and interned during World War II as a result of government action. These payments are also excluded when paid to the statutory heirs of deceased internees. (6-1-94)
27. **SSI Payments Under Zebley v. Sullivan Ruling.** Retroactive lump sum SSI payments, for childhood disability, paid as a result of the Zebley v. Sullivan ruling. The payments are excluded resources for six (6) months from receipt. (6-1-94)
28. **BIA Education Grant.** Bureau of Indian Affairs (BIA) Higher Education Grant Program. (6-1-94)
29. **WIC.** Benefits from the Women, Infants, and Children (WIC) Program. (6-1-94)
30. **WIA.** Payments from the Workforce Investment Act (WIA). (3-15-02)

31. Energy Assistance. Payments from Federal, state, or local energy assistance, including insulation and weatherization payments. (6-1-94)

32. HUD Payments. HUD retroactive subsidy payments for tax and utilities are excluded the month received and the next month. (6-1-94)

33. Agent Orange Settlement Fund. Product liability payments, made by Aetna Life and Casualty from the Agent Orange Settlement Fund. Effective January 1, 1989. (6-1-94)

34. Federal EITC. Federal Earned Income Tax Credit (EITC) is excluded *for the month of receipt and the following month. Federal EITC is excluded* for twelve (12) months from receipt *if the household member receives EITC while participating in the Food Stamp program. The exclusion continues only while the household participates in the Food Stamp program without a break, for up to twelve (12) months.* The month of receipt is the first month of the exclusion. ~~(1-1-95)~~(11-1-13)T

35. Crime Act of 1984 as Amended by P.L. 103-322. Payments from a crime victim compensation program. (7-1-99)

36. Federal Tax Refunds. Federal income tax refunds are excluded as a resource for a period of twelve (12) months from receipt. The month of receipt is the first month of the exclusion. (11-1-13)T

(BREAK IN CONTINUITY OF SECTIONS)

501. INITIAL CHANGES IN FOOD STAMP CASE.

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

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

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

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

04. Change Before Certification. If a household reports a change in household circumstances before certification ~~and the Department can act on the change~~, include the reported information in determining Food Stamp eligibility and amount. ~~(6-1-94)~~(11-1-13)T

05. Change After Certification. If a household reports a change after the initial Food Stamp benefit has been paid, the Department must act on the change ~~if it was required to be reported or would increase the household's Food Stamp benefits under these rules. Changes in the household's expenses will not be acted upon until a six-month or twelve-month contact, or recertification~~ as required by policy for acting on changes within a certification period. Notice of the change must be given to the Food Stamp household. ~~(3-29-12)~~(11-1-13)T

(BREAK IN CONTINUITY OF SECTIONS)

535. MEDICAL EXPENSES.

Elderly or disabled household members that incur ~~M~~medical expenses over thirty-five dollars (\$35), for elderly or disabled household members, are deducted from the household income per month are allowed a Standard Medical Expense (SME) deduction. Eligible households must verify monthly medical expenses of more than thirty-five dollars (\$35) at initial application. Households with medical expenses that exceed the monthly Standard Medical Expense may either verify the minimum amount to receive the SME or request and verify excess costs to receive an actual expense deduction at application and recertification. Allowable medical expense deductions are listed in Subsection 535.01 through 535.14 of these rules. The household must provide proof of the incurred or anticipated cost before a deduction is allowed.

~~(3-30-07)~~(11-1-13)T

01. Medical and Dental Services. Services must be performed by licensed practitioners, physicians, dentists, podiatrists, or other qualified health professionals. Other qualified health professionals include registered nurses, nurse practitioners, licensed physical therapists and licensed chiropractors. (6-1-94)

02. Psychotherapy and Rehabilitation Services. Services must be performed by licensed psychiatrists, licensed clinical psychologists, licensed practitioners, physicians or other qualified health professionals. (6-1-94)

03. Hospital or Outpatient Treatment. Hospital or outpatient treatment includes expenses for hospital, nursing care, State licensed nursing home care, and care to a person immediately before entering a hospital or nursing home. (4-6-05)

04. Prescription Drugs. Prescription drugs and prescribed over-the-counter medication including insulin. (6-1-94)

05. Medical Supplies and Sickroom Equipment. Medical supplies and sickroom equipment including rental or other equipment. (6-1-94)

06. Health Insurance. Health and hospitalization insurance premiums. These do not include health and accident policies payable in a lump sum for death or dismemberment. These do not include income maintenance policies to make mortgage or loan payments while a beneficiary is disabled. (6-1-94)

- 07. Medicare Premiums.** Medicare premiums related to coverage under Title XVIII of the Social Security Act. (6-1-94)
- 08. Cost-Sharing or Spend-Down Expenses.** Cost-sharing or spend-down expenses incurred by Medicaid recipients. (6-1-94)
- 09. Artificial Devices.** Dentures, hearing aids, and prostheses. (6-1-94)
- 10. Service Animal.** Expenses incurred buying and caring for any animal that has received special training to provide service to a disabled person. Expenses include costs for the service animal's food, training, and veterinary services. (4-4-13)
- 11. Eyeglasses.** Expenses for eye examinations and prescribed eyeglasses. (4-6-05)
- 12. Transportation and Lodging.** Reasonable transportation and lodging expenses incurred to get medical services. (4-6-05)
- 13. Attendant Care.** Attendant care costs necessary due to age, disability, or illness. If attendant care costs qualify for both the excess medical and dependent care expense deductions, the cost is treated as a medical expense. (4-6-05)
- 14. Attendant Meals.** An amount equal to the maximum Food Stamp allotment for a one (1) person household per month is deducted if the household provides most of the attendant's meals. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

573. ACTING ON HOUSEHOLD COMPOSITION CHANGES.

Changes in household composition are not required to be reported. If a household does report a change in household composition, ~~and the change would increase the Food Stamp benefit, proof is needed to act on the change~~ **the Department will act on the change as required by options allowed under 7 CFR 273.12(c).** ~~If proof is provided within ten (10) days, increase the Food Stamp benefits beginning the month immediately following when the change was reported. If proof is not provided within ten (10) days, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next six-month or twelve-month contact, or recertification.~~ (3-29-12)(11-1-13)T

(BREAK IN CONTINUITY OF SECTIONS)

575. HOUSEHOLD COMPOSITION CHANGES FOR STUDENT.

Ineligible students are defined as non-household members. When a student's status changes, the change is treated as a new person entering or leaving the Food Stamp household. ~~If a household~~

~~reports a change in student status, and the change would increase the Food Stamp benefit, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next recertification or twelve-month (12) contact.~~ (3-29-10)(11-1-13)T

(BREAK IN CONTINUITY OF SECTIONS)

613. CHANGES ON WHICH THE DEPARTMENT MUST ACT.

The Department must follow the procedures for acting on reported changes as described in 7 CFR 273.12. (11-1-13)T

~~**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~~ (4-7-11)
- ~~**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.~~ (4-7-11)

~~**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)~~

~~614. (RESERVED)~~

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

~~A household reporting a change in shelter, utility, dependent care, child support, or medical expenses will be not required to provide proof of the change until recertification and the six-month or twelve-month contact. The Department will not adjust the Food Stamp benefit during the certification period regardless of whether the change in expenses would cause the Food Stamp benefit to increase or decrease. (3-29-12)~~

~~614 -- 616. (RESERVED)~~

617. INCREASES IN FOOD STAMP BENEFITS.

01. Household Reports a Change. If a household reports a change, ~~other than a change to expenses~~, that results in an increase in Food Stamps and the proof cannot be obtained through interfaces or data brokers, the Department must allow the household ten (10) days to provide proof. ~~(3-29-10)~~(11-1-13)T

02. Failure to Provide Proof of Change. If the household fails to provide proof of a change that would increase the benefit level, the Food Stamp benefit remains at the amount already established. (3-29-10)

03. Proof Provided Within Ten Days. If the household provides proof within ten (10) days of reporting the change, the Department will increase the Food Stamp benefits beginning the month immediately following the month in which the change was reported. For changes reported after the 20th of the month, a supplement is issued for the next month no later than the 10th of the next month. If the change is reported and verified after the final date to adjust Food Stamp benefits for the following month in the Department's automated eligibility system, the change to the Food Stamp benefits must be made by the following month, even if a supplement must be

issued.

(4-11-06)

04. Proof Not Provided Within Ten Days. If the household fails to provide proof within ten (10) days of reporting the change, but provides proof later, benefits are increased the month after the proof of the change is provided. (3-29-10)

618. DECREASES IN FOOD STAMP BENEFITS.

~~If a change that is required to be acted upon~~ **If the Department acts on a change that** results in a decrease in Food Stamp benefits, the Department ~~must take action and~~ must give timely notice, if required. The notice must explain the reason for the action. ~~(3-29-10)~~**(11-1-13)T**

~~**619. CHANGES NOT REQUIRED TO BE REPORTED.**~~

~~If the household reports a change not required to be reported that would result in a decrease in Food Stamp benefits, the Department will not request proof and will not take action until recertification and the six-month or twelve-month contact. The household must be notified that no action will be taken on the reported change.~~ (3-29-12)

619 -- 620. (RESERVED)