IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

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

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

*The Bulletin is cited by year and issue number. For example, Bulletin **07-1** refers to the first Bulletin issued in calendar year **2007**; Bulletin **08-1** refers to the first Bulletin issued in calendar year **2008**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **08-1** refers to January 2008; Volume No. **08-2** refers to February 2008; and so forth. Example: The Bulletin published in January 2008 is cited as Volume **08-1**. The December 2007 Bulletin is cited as Volume **07-12**.*

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

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

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a "Notice of Proposed Rulemaking" in the Bulletin. This notice must include:

a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;

b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

c) the text of the proposed rule prepared in legislative format;

d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and

g) the deadline for public (written) comments on the proposed rule.

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate a proposed rulemaking if it decides not to proceed beyond the proposed rulemaking step, and stops the formal rulemaking process.

TEMPORARY RULEMAKING

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

a) protection of the public health, safety, or welfare; or

b) compliance with deadlines in amendments to governing law or federal programs; or

c) conferring a benefit;

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

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

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

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

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

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

a) a statement giving the reasons for adopting the rule;

b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;

c) the date the pending rule will become final and effective;

d) an identification of any portion of the rule imposing or increasing a fee or charge.

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

FINAL RULEMAKING

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

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

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

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

SUBSCRIPTIONS AND DISTRIBUTION

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

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

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

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

Internet Access *- The Administrative Code and Administrative Bulletin are available on the Internet at the following address*: ***http://adm.idaho.gov/adminrules/***

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.05.01.200.02.c.ii.

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

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

"05." *refers to Title* ***05****, which is the Department of Administrations's Division of Purchasing*

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

"200." *refers to Major Section* ***200****, "Content of the Invitation to Bid"*

"02." *refers to Subsection 200.****02****.*

*"****c****." refers to Subsection 200.02.****c****.*

"ii." *refers to Subsection 200.02.c.****ii****.*

DOCKET NUMBERING SYSTEM

*Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (**38-0501-0801**). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket number:*

"DOCKET NO. 38-0501-0801"

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

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

***"0801"** denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rule-making action published in **calendar year 2008**. A subsequent rulemaking on this same rule chapter in calendar year 2008 would be designated as "**0802**". The docket number in this scenario would be 38-0501-**0802**.*

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

(BREAK IN CONTINUITY OF SECTIONS)

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

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

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

The citation may also include the IDAPA, Title, or Chapter number, as follows"

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

***"38"** denotes the IDAPA number of the agency.*

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

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

***"201"** denotes the main Section number of the rule to which the citation refers.*

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

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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2009

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
09-1	January 2009	***November 14, 2008**	January 7, 2009	January 28, 2009
09-2	February 2009	January 9, 2009	February 4, 2009	February 25, 2009
09-3	March 2009	February 6, 2009	March 4, 2009	March 25, 2009
09-4	April 2009	March 6, 2009	April 1, 2009	April 22, 2009
09-5	May 2009	April 3, 2009	May 6, 2009	May 27, 2009
09-6	June 2009	May 1, 2009	June 3, 2009	June 24, 2009
09-7	July 2009	May 29, 2009	July 1, 2009	July 22, 2009
09-8	August 2009	July 3, 2009	August 5, 2009	August 26, 2009
09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	****August 28, 2009**	October 7, 2009	October 28, 2009
09-11	November 2009	October 2, 2009	November 4, 2009	November 25, 2009
09-12	December 2009	November 6, 2009	December 2, 2009	December 23, 2009

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	***November 13, 2009**	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 25, 2010
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10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	****August 27, 2010**	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

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

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

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THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 2009-10

ESTABLISHING A POLICY FOR ALL STATE AGENCIES CONCERNING PUBLIC FUNDS
REPEALING AND REPLACING 2006-40

WHEREAS, the President signed the American Recovery and Reinvestment Act of 2009 into law on February 17, 2009; and

WHEREAS, the State of Idaho has a responsibility to its citizens to ensure that public funds, including but not limited to state tax dollars and federal stimulus funds, are not paid to those who have entered our nation illegally or cannot legally work in the United States; and

WHEREAS, those who choose to enter our nation illegally should not be rewarded for their actions; and

WHEREAS, the State of Idaho should work to ensure that jobs funded with state tax dollars and federal stimulus funds are available for those who are lawfully entitled to work in our State and nation; and

NOW, THEREFORE, I, C.L. "Butch" Otter, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby order the following:

1. *The Division of Human Resources shall continue to develop and implement procedures to verify and ensure that all new employees with any agency of the State of Idaho are eligible for employment under federal and state law.*

2. *All state agencies, consistent with state law, including but not limited to the Department of Health and Welfare and Department of Labor, shall evaluate existing procedures and programs and if necessary implement new procedures or programs consistent with state and federal law to ensure that only individuals who are legally in the United States receive government benefits involving state or federal stimulus funds.*

3. *All contracts and requests for proposals, bids and information for state projects or services provided to the state that involve state or federal stimulus funds issued after the effective date of this executive order shall include notice that all contractors and subcontractors declare to the contracting state agency that they have substantiated that all employees providing services or involved in any way on projects funded directly by or assisted in whole or part by state funds or federal stimulus dollars can legally work in the United States.*

4. *The Department of Administration and other state agencies shall develop and implement procedures by July 1, 2009 to ensure that all contracts for projects or services performed for the State of Idaho with state, federal or stimulus funds are with businesses that employ individuals who are eligible under federal and state law to work in the United States.*

5. *The Department of Administration shall work with state agencies to evaluate existing procedures and programs and if necessary implement new policies and procedures regarding contractual penalties consistent with state law by July 1, 2009, for an employer who knowingly and willfully fails to confirm that an employee is eligible to work in the United States or knowingly and willfully employs a person who cannot legally work in this country. Penalties may include immediate cancellation of the contract, reversion of unspent public funds, and monetary penalties. After July 1, 2009, every contract by a state agency for a state project or service performed for the State of Idaho shall include appropriate civil penalties for violating this executive order.*

6. *The Department of Correction, in conjunction with the Commission for Pardons and Parole, shall evaluate all procedures and programs and if necessary implement new procedures or programs to ensure that*

individuals who are incarcerated in Idaho correctional facilities and in the United States illegally are deported after their sentence or as soon as possible in conformance with state law.

7. *For the purpose of this executive order and only this executive order "agency" shall mean all offices, departments, divisions, bureaus, boards, and commissions of the State, excluding the department of education, legislative and judicial branches of government.*

8. *For the purposes of this executive order and only this executive order the term "legally work in the United States" would include any citizen of the United States or individual who is eligible for employment under federal law.*

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 29th day of May in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-third and of the Statehood of Idaho the one hundred nineteenth.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-0901

NOTICE OF RULEMAKING - 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 25-2710, 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 15, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This change will update the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Feed Control Officials (AAFCO) usually published in January or February of each year. This is a standard reference manual for feed control officials for the registration of animal feeds. It provides for consistency in the definition of feed ingredients and registration policies concerning feeds between states and the U.S. Food and Drug Administration when feeds are being registered.

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:

There is no fiscal impact with the adoption of this rule change. This is a dedicated fund program.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simplicity of the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

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 22, 2009.

DATED this 14th day of May, 2009.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0602-0901

004. INCORPORATION BY REFERENCE.
Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (3-30-07)

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the "20~~09~~10 Official Publication" of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder.
~~(5-8-09)~~(____)

02. The Merck Index. The "2006 Merck Index," 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (3-30-07)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW

DOCKET NO. 02-0612-0901

NOTICE OF RULEMAKING - 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 22-604, 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 15, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This change will update the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) usually published in January or February of each year. These are standard reference manuals for fertilizer control officials for the registration of fertilizers. They provide for consistency in the definitions of chemicals, fertilizer ingredients, terms, and policies concerning fertilizer registration between states.

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:

There is no fiscal impact with the adoption of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simplicity of the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

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 22, 2009.

DATED this 14th day of May, 2009.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0612-0901

004. INCORPORATION BY REFERENCE.
Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: (3-30-01)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the "20~~*09*~~10 Official Publication" of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder; or ~~*(5-8-09)*~~(____)

02. The Merck Index. The "2006 Merck Index," 14th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (4-2-08)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-0901

NOTICE OF RULEMAKING - 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 22-2204, 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 15, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This change will update the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) usually published in January or February of each year. These are standard reference manuals for fertilizer control officials for the registration of soil and plant amendments. They provide for consistency in the definitions of chemicals, soil and plant amendment ingredients, terms and policies concerning soil and plant amendment registration between states.

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:

There is no fiscal impact with the adoption of this rule change. This is a dedicated fund program.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simplicity of the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

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 22, 2009.

DATED this 21st day of May, 2009.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0641090

004. INCORPORATION BY REFERENCE.
Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: (4-6-05)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The terms, ingredient definitions and policies as published in the "20~~09~~10 Official Publication" of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. ~~(5-8-09)~~()

02. The Merck Index. The "2006 Merck Index," 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (4-2-08)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL

DOCKET NO. 07-0103-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 54-1005, 54-1006, and 54-1008, 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 15, 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:

Section 54-1008, Idaho Code, requires that the Electrical Board promulgate rules providing for a staggered system of issuing and renewing licenses. Electrical Contractor licenses are currently all renewed on July 1 of each year and are not renewed through a staggered system throughout the year. Other electrical license categories are already issued and renewed in accordance with a staggered system; however, in order to comply with the statute, a rule providing for a staggered system of issuing and renewing licenses is required. The rule change clarifies that the licensure period commences as of the date of original issuance, and thereafter must be renewed during the month of the date of original issuance. The rule change further provides that the license expires on the last day of the renewal month, and that applicants have until the last day of their renewal month in which to renew the license, and provides that any license not renewed in the anniversary month, but revived within the subsequent 12-month period shall continue to have the original license anniversary date for the purposes of future renewals.

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

The rule change confers a benefit upon individuals applying for or renewing Electrical Contractor licenses.

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:

There will be a temporary negative fiscal impact to the agency as current contractor licenses will be extended until the month of their original issuance date; but the impact will disappear after the first transitional year and will not represent a continuing adverse fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 22, 2009.

DATED this 26th day of May, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 07-0103-0901

011. LICENSE APPLICATION FORMS/APPRENTICE REGISTRATION FORMS.
Application forms for Electrical Contractor, Master Electrician, Journeyman Electrician Licenses, Specialty Electrical Licenses, and registration forms for Apprentice Electricians and Specialty Electrical Trainees shall be printed and made available by the Electrical Bureau of the Division of Building Safety, state of Idaho. (4-5-00)

01. Application Forms. All applications for licenses and all registrations shall be properly completed, giving all pertinent information, and all signatures shall be notarized. (4-5-00)

02. Application Fee. All applications for electrical licenses shall be accompanied by the fifteen dollar ($15) application fee; apprentice and specialty trainee registration forms shall be accompanied by the ten dollar ($10) registration fee as provided by Section 54-1014, Idaho Code. (4-5-00)

03. Application Submission. An application for license shall be submitted to the Electrical Bureau and shall be approved by an authorized representative of the Bureau before any examination is given and before any license is issued. (4-5-00)

04. Examination. An applicant for licensure must take the required examination within ninety (90) days of the date of application, or the application shall be considered to be null and void. (4-5-00)

05. License. Following the approval by an authorized representative and the successful completion of the required examination, the applicant must purchase a license prior to engaging in business within the state of Idaho. Applicants who fail to purchase a license within ninety (90) days of the date of successful examination shall be required to reapply for licensure, again obtain the approval of an authorized representative, and re-examine. (4-5-00)

06. License Period. All original licenses and registrations shall be issued by the Division immediately upon receipt of the licensure fee and other necessary documentation from the applicant which date shall be designated as the original license anniversary date and signify the commencement of the licensing period. All license and registration renewals shall be effective in the year renewed as of the original license anniversary date. All license and registration periods shall end at midnight on the last day of the final month of the licensing or registration period. Licenses and registrations not renewed by this date shall have expired. Any expired license revived within the twelve (12) month period following the expiration date will continue to have the original license anniversary date for purposes of subsequent renewal. (7-1-09)T

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

DOCKET NO. 07-0104-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 54-1005, 54-1006, and 54-1008, 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 15, 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:

Section 54-1008, Idaho Code, requires that the Electrical Board promulgate rules providing for a staggered system of issuing and renewing licenses. Electrical Specialty Contractor licenses are currently all renewed on July 1 of each year and are not renewed through a staggered system throughout the year. Other electrical license categories are already issued and renewed in accordance with a staggered system; however, in order to comply with the statute, a rule providing for a staggered system of issuing and renewing licenses is required. The rule change clarifies that the licensure period commences as of the date of original issuance, and thereafter must be renewed during the month of the date of original issuance. The rule change further provides that the license expires on the last day of the renewal month, and that applicants have until the last day of their renewal month in which to renew the license, and provides that any license not renewed in the anniversary month, but revived within the subsequent 12-month period shall continue to have the original license anniversary date for the purposes of future renewals.

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

The rule change confers a benefit upon individuals applying for or renewing Electrical Specialty Contractor licenses.

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:

There will be a temporary negative fiscal impact to the agency as current specialty contractor licenses will be extended until the month of their original issuance date; but the impact will disappear after the first transitional year and will not represent a continuing adverse fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 22, 2009.

DATED this 26th day of May, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 07-0104-0901

016. LICENSURE PERIOD AND ~~*RENEWAL*~~ FEES.
All original specialty licenses and registrations shall be issued by the Division immediately upon receipt of the licensure fee and other necessary documentation from the applicant which date shall be designated as the original license anniversary date and signify the commencement of the licensing period. All specialty license and registration renewals shall be effective in the year renewed as of the original license anniversary date. All license and registration periods shall end at midnight on the last day of the final month of the licensing or registration period. Specialty licenses and registrations not renewed by this date shall have expired. Any expired license revived within the twelve-month period following the expiration date will continue to have the original license anniversary date for the purposes of subsequent renewal. The license fee and renewal fee for each type of specialty license shall be as provided for by Section 54-1014, Idaho Code, for other journeyman licenses. ~~*(7-9-84)*~~(7-1-09)T

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.12 - RULES GOVERNING MANUFACTURED OR MOBILE HOME INSTALLATIONS

DOCKET NO. 07-0312-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 8, 2009.

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 44-2201, 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 15, 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 U.S. Department of Housing and Urban Development (HUD) recently promulgated federal installation standards for all new manufactured homes. HUD also approves Idaho's enforcement program as it relates to the installation of new manufactured homes. In order for Idaho to obtain HUD's continued approval of its installation enforcement program, HUD is requiring that all new manufactured homes be installed in accordance with its federal standards. HUD is also requiring the Idaho rules mandate that all new installations be in accordance with the manufacturer's HUD approved installation instructions. The rule changes provide that all new manufactured homes shall be installed in accordance with the manufacturer's approved instructions, as opposed to the current language which indicates they may be installed in accordance with manufacturer's instructions only when specifically required by the Idaho Manufactured Home Installation Standards.

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

The rule change is necessary to comply with deadlines in amendments to federal law.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 22, 2009.

DATED this 27th day of May 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 07-0312-0901

004. ADOPTION AND INCORPORATION BY REFERENCE.
The Idaho Manufactured Home Installation Standard (January 1, 2004 edition), as adopted by the administrator, is hereby adopted and incorporated by reference into these rules. A current copy is available for review or copying at the office of the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642. ~~*(3-20-04)*~~(5-8-09)T

(BREAK IN CONTINUITY OF SECTIONS)

012. USE OF MANUFACTURERS' INSTALLATION INSTRUCTIONS.
~~*Manufacturer's installation instructions may be used only where specifically permitted within Subsections 301.04 and 304.03 of the standards referenced in Section 004 of these rules.*~~ All new HUD manufactured homes shall be installed in accordance with the manufacturer's Design Approval Primary Inspection Agency (DAPIA) approved installation instructions. In any instance in which there is a conflict between the DAPIA installation instructions and the Idaho Manufactured Home Installation Standards, the DAPIA installation instructions shall supersede and serve as the controlling authority. All manufactured or mobile homes must be installed in accordance with all other applicable state laws pertaining to utility connection requirements. ~~*(5-3-03)*~~(5-8-09)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.02 - RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES (EMS) PHYSICIAN COMMISSION

DOCKET NO. 16-0202-0901

NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2009. The effective date of the amendment to the temporary rule is July 1, 2009.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has amended a temporary rule. The action is authorized pursuant to Sections 56-1013A and 56-1017, Idaho Code.

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

To best protect the public's health and safety, the Emergency Medical Services (EMS) Physician Commission is amending their Standards Manual that is incorporated by reference in this chapter of rules. This Standards Manual includes a "scope of practice" manual that governs the medications, devices, and clinical interventions that EMS personnel can use to treat patients at emergency scenes and in ambulances. The updated version of the manual adds several important clinical interventions that can be used by EMS personnel.

The following change is being made in this rulemaking:

The "Incorporation by Reference" section of these rules is being revised with the updated edition number (2009-2) of the EMS Physician Commission Standards Manual. This rule revision will ensure the updated manual has the force and effect of law. Copies of the 2009-2 edition of the EMS Physician Commission Standards Manual will be available to the public on the effective date of this rulemaking.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it is necessary for the protection of the public health, safety, and welfare of Idahoans.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

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 impact to the state general fund as result of this rulemaking.

***NOTE:** The EMS Physician Commission is funded entirely by receipts from initial and renewal EMS personnel licensure in accordance with Section 56-1013A(6), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Dia Gainor at (208) 334-4000.

DATED this 2nd day of June, 2009.

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

THE FOLLOWING IS AMENDED TEMPORARY TEXT OF DOCKET NO. 16-0202-0901

004. INCORPORATION BY REFERENCE.
The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2009~~-1~~2, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained from the EMS Bureau located at 650 W. State Street, Suite B-17, Boise, Idaho, 83702, whose mailing address is P.O. Box 83720, Boise, Idaho 83720-0036.
~~*(5-1-09)T*~~(7-1-09)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rule are March 11, 2009, April 1, 2009, and July 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, 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 Public Law 111-8, Sections 601 and 602, "Afghan Allies Protection Act of 2009"; H.R.1, "American Recovery and Reinvestment Act of 2009"; and "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009," Sections 113 (deemed newborn definition) and 221 (citizenship documentation for deemed newborns and tribal members).

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 15, 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:

This rulemaking is being proposed due to several changes in federal requirements. The changes in federal statute create the following changes to the Department's rules dealing with eligibility for services:

1. Extend the Afghani special immigrant benefits to eight months. (Effective March 11, 2009)

2. Amend deemed newborn (a newborn child deemed eligible for Medicaid for the first year of his life) to remain eligible regardless of mother's eligibility or whether living with birth mother. (Effective April 1, 2009)

3. Align citizenship and identification documentation requirements with federal regulations for deemed newborns and tribal members. (Effective April 1, 2009)

4. Exclude income as required and defined in federal law. (Effective July 1, 2009)

5. Delete the reporting requirements and income test from Transitional Medicaid. (Effective July 1, 2009)

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rulemaking is necessary to meet deadlines in federal regulation and confers a benefit to participants receiving 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: 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:

The total estimated impact of this rulemaking is $891,200, of which $185,700 would be from the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 67-5220, negotiated rulemaking was not conducted because this rule is being written to comply with federal regulations.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 22, 2009.

DATED this 29th day of May, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
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P.O. Box 83720
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0301-0901

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 ~~*six*~~ eight (~~*6*~~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. ~~*(5-8-09)*~~(3-11-09)T

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)

(BREAK IN CONTINUITY OF SECTIONS)

222. LEVELS OF CITIZENSHIP DOCUMENTATION.

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 proving membership, enrollment in, or affiliation with such tribe. (4-1-09)T

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 222.01 is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

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. Certification of birth abroad, Form FS-545; (4-2-08)

k. 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 Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

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; or (3-30-07)

b. 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. (3-30-07)

c. Religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing whether 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. (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 105.01 through 105.03 of these rules 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 Subsection 222.05 or Section 223 of these rules to establish both citizenship and identity. (3-30-07)

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 for participants sixteen (16) years of age or older and was created at least five (5) years before the application for Medicaid. For children under sixteen (16) years of age, the document must have been created near the time of birth; (4-2-08)

~~*i.* *Seneca Indian tribal census record;* *(3-30-07)*~~

i~~*i*~~. Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)

ii~~*i*~~. U.S. State vital Statistics official notification of birth registration; (3-30-07)

i~~*v*~~ii. A delayed U.S. public birth record that is 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~~*i*~~. Medical (clinic, doctor, or hospital) record; (3-30-07)

vi~~*i*~~. Institutional admission papers from a nursing facility, skilled care facility or other institution; or

(3-30-07)

vii~~i~~. Bureau of Indian Affairs roll of Alaska Natives. (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 Subsections 222.01 through 222.04 of this rule to establish both citizenship and identity.(3-30-07)

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 222.05.a of this rule; (3-30-07)

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; or ~~(3-30-07)~~(4-1-09)T

~~***g.*** *Certificate of Degree of Indian blood; or* *(3-30-07)*~~

~~***h.*** *Native American Indian or Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual.* *(3-30-07)*~~

~~***i***~~**g.** Identity affidavits are acceptable proof of identity for individuals living in a residential care facility. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

385. INCOME EXCLUDED BY FEDERAL LAW.
Income excluded by federal law is not counted in determining income available to the participant. ~~*The following kinds of income are excluded by federal law:*~~ ~~*(3-30-07)*~~(7-1-09)T

~~***01. Agent Orange Settlement Funds**. Payments made to veterans from the Agent Orange Settlement Fund.* *(3-30-07)*~~

~~***02. Alaska Native Claims**. Tax-exempt portions of payments made in accordance with the Alaska Native Claims Settlement Act, PL 92-203.* *(3-30-07)*~~

~~***03. AmeriCorps**. AmeriCorps payments for child care allowances and educational awards, other than stipends or living allowances, are excluded.* *(3-30-07)*~~

~~***04. Child Nutrition Benefits**. The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the food service program for children under the National School Fund Act, as amended, (PL 92-433 and PL 93-150). These are the WIC program and school lunch program.* *(3-30-07)*~~

~~***05. Commodities and Food Stamps**. The value of U.S. Department of Agriculture donated commodities and Food Stamps.* *(3-30-07)*~~

~~***06. Disaster Relief**. Assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President declared disaster and comparable disaster assistance provided by states, local government and disaster assistance organizations.* *(3-30-07)*~~

~~***07. Elderly Nutritional Benefits**. Any benefits received under Title VII, Nutritional Program for the Elderly, of the Older Americans Act of 1965.* *(3-30-07)*~~

~~***08. Foster Care and Adoption Assistance Payment**. Foster care payments paid by the Department are excluded. Adoption Assistance payments paid by federal, state or local agencies are excluded.* *(3-30-07)*~~

~~***09. Garnishments**. Income garnished by court order is not available and is excluded.* *(3-30-07)*~~

~~***10. Home Energy Assistance**. PL 100-203 excludes Home Energy Assistance. The aid must be provided based on need certified by the Department.* *(3-30-07)*~~

~~***11. Home Produce**. The value of home produce used by the family.* *(3-30-07)*~~

~~***12. Housing Subsidies**. The value of government rent or housing subsidies or both, if the participant receives both.* *(3-30-07)*~~

~~***13. HUD Family Self Sufficiency Escrow Account**. Interest earned on an escrow account established*~~

~~*by HUD for families participating in the Family Self-Sufficiency Program established by Section 544 of the National Affordable Housing Act.* (3-30-07)~~

~~***14.*** ***Income Tax Refunds and Earned Income Tax Credit (EITC) Payments****. Income tax refunds are excluded from income, but counted as a resource. Earned Income Tax Credit payments, or the advance payment of the EITC, is excluded.* (3-30-07)~~

~~***15.*** ***Indian Payments****. Payments distributed to or held in trust for members of any Indian tribe issued under PL 92-254, PL 93-134, or PL 94-540. Payments distributed to certain Indian tribes, including the Shoshone Bannock Tribe of Fort Hall, Idaho, referenced under Section 5 of PL 94-114, effective October 10, 1975. Per capita judgment funds paid to members of the Blackfoot Tribe of the Blackfoot Indian Reservation, Montana and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana. Per capita funds held in trust by the Secretary of the Interior for tribal members paid under PL 98-64. Effective January 1, 1994, up to two thousand dollars ($2,000) of payments derived from interests of individual Indians in trust or restricted lands are excluded by Section 8 of the PL 93-134 as amended by PL 103-66.* (3-30-07)~~

~~***16.*** ***Loans****. A bona fide loan is not available income.* (3-30-07)~~

~~***17.*** ***Low Income Energy Assistance****. Money paid to families under the Low Income Energy Assistance Act of 1981 under 42 U.S.C. 8624(f) is excluded.* (3-30-07)~~

~~***18.*** ***Radiation Exposure Compensation Act****. Payments made to individuals under this act are excluded.* (3-30-07)~~

~~***19.*** ***Relocation Assistance****. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, contained in 42 U.S.C. Subsection 4636 of the U.S. Code, and relocation payments paid to civilians of World War II per Public Law 100-383.* (3-30-07)~~

~~***20.*** ***SSI Income or AABD Income****. Income and resources of a person who has been determined eligible for, or is receiving SSI or AABD, is excluded.* (3-30-07)~~

~~***21.*** ***Senior Volunteer Programs****. Payments for supportive services or out of pocket expenses made to individual volunteers serving as foster grandparents, Vista volunteers, senior health aids, or senior companions and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title II and Title III of the Domestic Volunteer Service Act of 1973, Section 418, PL 93-113, and 93-143. This Federal Code is contained in Titles 5 and 42 of the U.S. Code.* (3-30-07)~~

~~***22.*** ***Spina Bifida****. Spina bifida allowances paid to children of Vietnam veterans.* (3-30-07)~~

~~***23.*** ***Third Party Deposits to a Checking Account****. Third party deposits to a participant's checking account are excluded if the deposit is solely for the use of the third party and the participant receives no benefit from the deposit.* (3-30-07)~~

~~***24.*** ***Utility Reimbursement Payments****. Utility reimbursement payments made to persons living in housing subsidized by HUD.* (3-30-07)~~

~~***25.*** ***Work Related Payments****. Payments made by an employer for work related expenses are excluded. Work-related expenses include travel and per diem.* (3-30-07)~~

(BREAK IN CONTINUITY OF SECTIONS)

422. -- 424. (RESERVED).

~~***423.*** ***TRANSITIONAL MEDICAID REPORTING REQUIREMENT.***~~

~~*To continue to receive Transitional Medicaid for months seven (7) through twelve (12), the family must complete and return three (3) quarterly reports. Each report must include the family gross earnings, expenses for dependent care needed for employment, and any change to the family composition. Proof of monthly earnings and dependent care expenses must be provided with each report.* (5-8-09)~~

~~***424. INCOME TESTS FOR TRANSITIONAL MEDICAID.***~~

~~***01. Income Test**. The family's reported earnings, less dependant care expenses necessary for employment, must not exceed one-hundred and eighty-five percent (185%) of the FPG for the family size.* (5-8-09)~~

~~***02. Good Cause for Lack of Earnings**. Good cause for lack of earnings includes, but is not limited to:* (4-2-08)~~

~~***a.** Family crisis.* (4-2-08)~~

~~***b.** Court required appearance or incarceration.* (4-2-08)~~

~~***c.** Loss of transportation where no other means of transportation is readily accessible.* (4-2-08)~~

~~***d.** Loss of child care arrangements.* (4-2-08)~~

~~***e.** Involuntary loss of employment.* (4-2-08)~~

~~***f.** Illness.* (4-2-08)~~

(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; (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 ~~six~~ eight (~~6~~8) months; or ~~(5-8-09)~~(3-11-09-)T

d. A child is an Iraqi special immigrant and is approved for eight (8) months. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

530. NEWBORN CHILD DEEMED ELIGIBLE FOR MEDICAID.
A child is deemed eligible for Medicaid for his first year of life if: (4-2-08)

01. Mother Filing an Application. The child is born to a mother who files an application for medical assistance, and (4-2-08)

02. Mother Is Eligible for Medicaid. The mother is ~~*at or below one hundred thirty-three (133%) FPG and is*~~ eligible for Medicaid in the newborn's birth month. This includes a mother ~~*with income at or below one hundred thirty-three (133%) of poverty*~~ who qualifies for coverage ~~*of*~~ only for the delivery because of her alien status. ~~*(4-2-08)*~~(4-1-09)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-0902

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 1, 2009. This temporary rule will be in effect for twelve months and will expire on May 31, 2010, unless the rule is not extended by concurrent resolution of the 2010 Legislature in which case the rule expires at the conclusion of the 2010 legislative session.

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 Section 56-203, Idaho Code.

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

Given the current economic climate and the burden placed on low-income Idahoans in need of food assistance, the Department is removing the asset test as one of the requirements for food stamp eligibility at the time of application. This rule change will be effective for a period of twelve months beginning June 1, 2009. The change will allow individuals with very low incomes who would otherwise be eligible for benefits, if not for the ownership of some assets, to access necessary food assistance. This policy change aligns with the economic stimulus efforts of the American Recovery and Reinvestment Act of 2009.

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:

Low-income Idahoans in the current economic climate are in need of food assistance and the changes in this rulemaking will confer a benefit to help those in need.

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:

Although the actual benefit payments for Food Stamps are 100% federally-funded, the Department estimates it will need supplemental funds of $40,200 ($20,100 in general funds and $20,100 in federal matching funds) for the 2009 State Fiscal Year. For State Fiscal Year 2010, the Department will require an appropriation of $462,000 ($231,000 general funds and $231,000 federal funds).

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

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

DATED this 29th day of May, 2009.

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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THE FOLLOWING IS THE TEMPORARY TEXT FOR DOCKET 16-0304-0902

010. DEFINITIONS A THROUGH D.
For the Food Stamp Program, the following definitions apply: (4-11-06)

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

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

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

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

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

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

07. Authorized Representative. A person designated by the household to act on behalf of the household to apply for or receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (4-11-06)

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

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

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

11. Categorical Eligibility. There are two (2) types of categorically eligible households: (6-1-09)T

a. Categorically Eligible Household. If all household members receive or are authorized to receive a monthly cash payment through TAFI, AABD, or SSI, the household is categorically eligible. A ~~C~~categorically eligible household~~s are~~ is exempt from resource, gross, and net income eligibility standards. ~~(4-11-06)~~(6-1-09)T

b. Expanded Categorically Eligible Household. If a household receives a TANF-funded non-cash or in-kind service, it is categorically eligible. An expanded categorically eligible household must meet the gross and net income standards for its household size. An expanded categorically eligible household is exempt from resource standards. (6-1-09)T

12. Certification Determination. Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure

prompt, efficient and correct certifications. (6-1-94)

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

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

15. **Change Reporting Household (CR)**. A household in which all members are elderly or disabled. (4-11-06)

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

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

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

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

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

b. Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)

c. Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)

d. Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)

e. Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)

f. Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)

g. Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)

h. Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)

i. Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use, or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole. The felony must have occurred after August 22, 1996. (3-30-01)

20. **Documentation**. The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)

21. **Drug Addiction or Alcoholic Treatment Program**. Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

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)*~~(6-1-09)T

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)*~~(6-1-09)T

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)*~~(6-1-09)T

179. HOUSEHOLDS NOT CATEGORICALLY ELIGIBLE.
The households listed below are not categorically eligible for Food Stamps unless they meet the criteria listed in Section 181 of these rules. ~~*(6-1-94)*~~(6-1-09)T

01. Medicaid Only. Households are not categorically eligible if any household member ~~*gets*~~ receives Medicaid benefits only. ~~*(6-1-94)*~~(6-1-09)T

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*~~ meets any of the criteria listed in Sections 178 or 181 of these rules. 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)*~~(6-1-09)T

181. ~~*MIXED HOUSEHOLDS*~~ EXPANDED CATEGORICALLY ELIGIBLE HOUSEHOLDS.
~~*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.*~~ Effective June 1, 2009, a household receiving TANF-funded non-cash or in-kind services is considered an expanded categorically eligible household. The household must meet the gross and net income standards for its household size. An expanded categorically eligible household with members who are aged or disabled must have gross income at or below two hundred percent (200%) of the FPG, and must meet the net income standards for its household size. An expanded categorically eligible household is exempt from resource standards. A household's expanded categorical eligibility is determined as of the Food Stamp interview date. ~~*(6-1-94)*~~(6-1-09)T

~~***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)

302. CATEGORICALLY ELIGIBLE HOUSEHOLD.
A household is exempt from the resource limit if all household members ~~*receive or are authorized to receive monthly cash payments through TAFI, AABD, or SSI*~~ meet any of the criteria listed in Sections 178 or 181 of these rules. ~~*(4-11-06)*~~(6-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

304. COUNTING RESOURCES FOR RECIPIENTS.
Determine resources for recipients throughout the certification period as described in Section 601 of these rules. The assets of a categorically eligible household will be excluded until eligibility is re-evaluated at the next recertification or twelve (12) month contact. ~~*(4-11-06)*~~(6-1-09)T

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)

(BREAK IN CONTINUITY OF SECTIONS)

601. REPORTING REQUIREMENTS AND RESPONSIBILITIES.
The household must report and verify changes in circumstances based on the requirements for the reporting group to which the household is assigned. Changes may be reported by phone, by mail, or directly to the Department. Households must report as follows: (4-6-05)

01. Change Reporting (CR) Households. Change reporting households must report the following: (4-11-06)

a. Unearned income changes of more than fifty dollars ($50); (4-6-05)

b. Earned income changes of more than one hundred dollars ($100); (4-6-05)

c. Address changes and new shelter and utility expenses related to a change in address; (1-1-09)T

d. Changes in household composition; and (4-6-05)

e. When resources exceed the resource limit unless the household is categorically eligible under Sections 178 or 181 of these rules. ~~*(4-6-05)*~~(6-1-09)T

02. Simplified Reporting (SR) Households. Simplified reporting households must report the following: (4-6-05)

a. When the household's total gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Guideline (FPG) for the household size; (4-6-05)

b. Any change of address; and (4-11-06)

c. A decrease in ABAWD hours to less than eighty (80) hours per month. (4-6-05)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-0902 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 held as follows:

WEDNESDAY JULY 8, 2009 6:00 p.m. MDT	THURSDAY JULY 9, 2009 7:00 p.m. PDT	THURSDAY JULY 16, 2009 5:00 p.m. MDT
State Office Bldg. 150 Shoup Ave. 2nd Floor Lg. Conf. Room Idaho Falls, ID	**DHW - Region 1 Office 1120 Ironwood Drive Suite 102, Lg. Conf. Room Coeur d'Alene, ID**	**DHW - Region III Office 3402 Franklin Road Sawtooth Room Caldwell, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In order to meet legislative intent for Medicaid cost containment measures in House Bill 322 for the state fiscal year 2010, the Department is implementing changes in this chapter of rule to provide provisions for cost-sharing for Home Care for Certain Disabled Children (HCCDC) also known as Katie Beckett. The premium and actual cost-sharing amounts are provided under IDAPA 16.03.18. "Medicaid Cost-Sharing," Docket No. 16-0318-0901, published in the July 1, 2009, Idaho Administrative Bulletin."

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:

These rule changes are needed to meet deadlines in governing law to implement cost containment measures for the state fiscal year 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:

This cost-sharing measure is required to meet 2010 Legislative intent language in House Bill 322.

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 due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these cost saving measures are being required to meet legislative intent.

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 July 22, 2009.

DATED this 4th day of June, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET 16-0305-0902

785. CERTAIN DISABLED CHILDREN.
A disabled child, not eligible for Medicaid outside a medical institution, is eligible for Medicaid if he meets the conditions in Subsections 785.01 through 785.0~~7~~8 of these rules. ~~*(3-15-02)*~~(7-1-09)T

01. **Age**. Is under nineteen (19) years old. (7-1-99)

02. **AABD Criteria**. Meets the AABD blindness or disability criteria. (7-1-99)

03. **AABD Resource Limit**. Meets the AABD single person resource limit. (7-1-99)

04. **Income Limit**. Has monthly income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. (7-1-99)

05. **Eligible for Long Term Care**. Meets the medical conditions for long-term care in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)

06. **Appropriate Care**. Is appropriately cared for outside a medical institution, under a physician's plan of care. (7-1-99)

07. **Cost of Care**. Can be cared for cost effectively outside a medical institution. The estimated cost of caring for the child must not exceed the cost of the child's care in a hospital, nursing facility, or ICF-MR. (3-15-02)

08. **Share of Cost**. The financially responsible adult of a certain disabled child, who has family income above one hundred fifty percent (150%) of the federal poverty guidelines, is required to share in the cost of the child's Medicaid benefits under the provisions in IDAPA 16.03.18, "Medicaid Cost-Sharing." (7-1-09)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.06 - REFUGEE MEDICAL ASSISTANCE

DOCKET NO. 16-0306-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 11, 2009.

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, 45 CFR Parts 400 and 401, Section 412E, Title IV, Public Law 96-212 also known as the "Refugee Act of 1980," 94 Stat. 114 (8 USC 1521) and Action Transmittal ORR-AT-80-6, and Public Law 111-8, Sections 601 and 602, "Afghan Allies Protection Act of 2009."

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 Wednesday, July 15, 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:

Afghani special immigrant benefits need to be extended from six months to eight months to bring them into alignment with recent changes in federal law (P.L. 111-8, Sections 601 and 602).

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b and c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate both to comply with deadlines in amendments to governing law or federal programs, and to confer a benefit.

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 impact to the state general fund as a result of this rulemaking. This program is 100% federally funded, and due to the low number of participants, the additional two months of eligibility is expected to have minimal impact on federal funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to align with changes in federal statute made under the "Afghan Allies Protection Act of 2009."

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, July 22, 2009.

DATED this 29th day of May, 2009.

Tamara Prisock
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 16-0306-0901

100. IDENTIFICATION OF REFUGEES.

01. Refugee Immigration Status. A person has refugee status for purposes of assistance under the Refugee Medical Assistance Program if he is one (1) of the following: (4-2-08)

a. A person from Cambodia, Laos, or Vietnam who has a Form I-94 indicating that the person has been paroled under Section 212(d)(5) of the Immigration and Nationality Act (INA). The I-94 must clearly indicate that the person has been paroled as a refugee or asylee. (4-2-08)

b. A person from Cuba who is present in the United States, and who has an I-94 indicating that the person has been paroled under Section 212(d)(5) of the INA. The I-94 must clearly indicate that the person has been paroled as a refugee or asylee. (4-2-08)

c. A person from any country who has Form I-94 indicating that the person has been: (4-2-08)

i. Paroled under Section 212(d)(5) of the INA as a refugee or asylee; or (4-2-08)

ii. Admitted as a conditional entrant under Section 203(a)(7) of the INA; or (4-2-08)

iii. Admitted as a refugee under Section 207 of INA; or (4-2-08)

iv. Granted asylum under Section 208 of INA; or (4-2-08)

d. A person who entered the United States and has Form I-151 or I-551 showing that his status has been subsequently adjusted from one (1) of the statuses in Subsection 100.02.c. of this rule to that of permanent resident alien, provided he can document his previous status. (4-2-08)

e. A child born in the United States to eligible refugee parent(s) with whom he lives. (4-2-08)

f. An Amerasian together with close family members who entered the United States beginning March 20, 1988, in immigrant status through the Orderly Departure Program. Close family members who are eligible refugees under this provision are limited to: (4-2-08)

i. The Amerasian's spouse and child(ren); (4-2-08)

ii. The mother of an unmarried Amerasian and such mother's spouse and child(ren); and (4-2-08)

iii. A person who has acted as the parent of an unmarried Amerasian and that person's spouse and child(ren). (4-2-08)

02. 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 ~~*six*~~ eight (~~*6*~~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. ~~*(5-8-09)*~~(3-11-09)T

03. 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)

04. Other Factors in Determining Eligibility for the Refugee Medical Assistance Program. (4-2-08)

a. An applicant who has applied for, but has not been granted asylum, is not eligible. (4-2-08)

b. A person who entered the United States as a resident alien is not eligible. (4-2-08)

c. A Form I-94 which shows a person has been paroled into the United States under Section 212(d)(5) of the INA must clearly indicate that the person has been paroled as a "Refugee" or "Asylee" if such form was issued: (4-2-08)

i. To a person from Cambodia, Laos, or Vietnam before October 1, 1997, in accordance with P.L. 106-429, Section 101(a), as amended by P.L. 108-447; or (4-2-08)

ii. To a person from Cuba; or (4-2-08)

iii. To a person from any other country at any time. (4-2-08)

d. A person whose status is Cuban/Haitian Entrant must have his eligibility for benefits under the Refugee Medical Assistance Program determined under Sections 125 and 200 of these rules. (4-2-08)

e. An Amerasian or close family member admitted as an immigrant but eligible for Refugee Medical Assistance as though he were a refugee must have either of the following documents verifying his status: (4-2-08)

i. A temporary identification document, Form I-94 stamped "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until (expiration date). Employment authorized." The back of Form I-94 contains the stamped word "Admitted" and is coded AM1, AM2, or AM3; or (4-2-08)

ii. A permanent identification document, Form I-551 coded AM6, AM7, or AM8. (4-2-08)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 11, 2009.

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, 45 CFR Parts 260 through 265, and Public Law 111-8, Sections 601 and 602, "Afghan Allies Protection Act of 2009."

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 Wednesday, July 15, 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:

Afghani special immigrant benefits need to be extended from six months to eight months to bring them into alignment with recent changes in federal law (P.L. 111-8, Sections 601 and 602).

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b and c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate both to comply with deadlines in amendments to governing law or federal programs, and to confer a benefit.

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 impact to the state general fund as a result of this rulemaking. This program is 100% federally funded, and due to the low number of participants, the additional two months of eligibility is expected to have minimal impact on federal funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to align with changes in federal statute made under the "Afghan Allies Protection Act of 2009."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Chris Baylis at (208) 334-5742.

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 Wednesday, July 22, 2009.

DATED this 29th day of May, 2009.

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 IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 16-0308-0901

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, who has special immigration status after December 26, 2007, is eligible for ~~*six*~~ eight (~~*6*~~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. ~~*(5-8-09)*~~(3-11-09)T

10. 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)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2009.

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(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also Executive Order No. 2008-05 and House Bill 322 (2009).

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 Wednesday, July 15, 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:

These rules are being amended in response to the Governor's Executive Order No. 2008-05 that directed state agencies to hold back 4% of their state general fund budgets for State Fiscal Year 2009. This reduction is being carried over for the Department's Division of Medicaid for State Fiscal Year 2010 under House Bill 322 (2009). Cost savings under these rule changes will be realized through reduction in reimbursement percentages to Medicaid providers of hospital services.

Medicaid reimbursement for hospitals is based on a percentage of customary charges. This rule change will reduce the current maximum and minimum reimbursement percentages from 96.5% maximum and 81.5% minimum to new percentages of 91.7% maximum and 77.4% minimum. These percentages reflect a 5% decrease in the hospital reimbursement percentages, a reduction from the 10% decrease originally proposed.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it is being done to comply with Executive Order No. 2008-05, which created a deadline for compliance.

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:

The projected savings to the state general fund is approximately $4,326,650. These savings are already reflected in the State Fiscal Year 2010 appropriation.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rule changes are being made to comply with Executive Order No. 2008-05 that requires a 4% holdback of the Department's budget for State Fiscal Year 2009 and continued for State Fiscal Year 2010 under House Bill 322 (2009).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Sheila Pugatch at (208) 364-1817.

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 Wednesday, July 22, 2009.

DATED this 2nd day of June, 2009.

Tamara Prisock
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0309-0901

400. INPATIENT HOSPITAL SERVICES - DEFINITIONS.

01. Administratively Necessary Day (AND). An Administratively Necessary Day (AND) is intended to allow a hospital time for an orderly transfer or discharge of participant inpatients who are no longer in need of a continued acute level of care. ANDs may be authorized for inpatients who are awaiting placement for nursing facility level of care, or in-home services which are not available, or when catastrophic events prevent the scheduled discharge of an inpatient. (3-30-07)

02. Allowable Costs. The current year's Medicaid apportionment of a hospital's allowable costs determined at final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (3-30-07)

03. Apportioned Costs. Apportioned costs consist of the share of a hospital's total allowable costs attributed to Medicaid program participants and other patients so that the share borne by the program is based upon actual services received by program participants, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (3-30-07)

04. Capital Costs. For the purposes of hospital reimbursement, capital costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (3-30-07)

05. Case-Mix Index. The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the current year will be divided by the index of the principal year to assess the percent change between the years. (3-30-07)

06. Charity Care. Charity care is care provided to individuals who have no source of payment, third-party or personal resources. (3-30-07)

07. Children's Hospital. A Medicare-certified hospital as set forth in 42 CFR Section 412.23(d). (3-30-07)

08. Current Year. Any hospital cost reporting period for which reasonable cost is being determined will be termed the current year. (3-30-07)

09. Customary Hospital Charges. Customary hospital charges reflect the regular rates for inpatient or

outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Department. No more than ninety-~~*six*~~one and ~~*a half*~~ seven-tenths percent (~~*96.5*~~ 91.7%) of covered charges will be reimbursed for the separate operating costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 405.03.b. of these rules. ~~*(3-30-07)*~~(1-1-09)T

10. Disproportionate Share Hospital (DSH) Allotment Amount. The DSH allotment amount determined by CMS that is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (3-30-07)

11. Disproportionate Share Hospital (DSH) Survey. The DSH survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH in accordance with Subsection 405.09.a. of these rules. (3-30-07)

12. Disproportionate Share Threshold. The disproportionate share threshold is: (3-30-07)

a. The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (3-30-07)

b. A Low Income Revenue Rate exceeding twenty-five percent (25%). (3-30-07)

13. Excluded Units. Excluded units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (3-30-07)

14. Hospital Inflation Index. An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year. (3-30-07)

15. Low Income Revenue Rate. The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (3-30-07)

a. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (3-30-07)

b. The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care must not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (3-30-07)

16. Medicaid Inpatient Day. For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (3-30-07)

17. Medicaid Utilization Rate (MUR). The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH survey. In this paragraph, the term “inpatient days” includes Medicaid swing-bed days, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, “Medicaid inpatient days” includes paid days not counted in prior DSH threshold computations. (3-30-07)

18. Obstetricians. For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term “obstetrician” includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (3-30-07)

19. **On-Site**. A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location must be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital). (3-30-07)

20. **Operating Costs**. For the purposes of hospital reimbursement, operating costs are the allowable costs included in the cost centers established in the finalized Medicare cost report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (3-30-07)

21. **Other Allowable Costs**. Other allowable costs are those reasonable costs recognized under the Medicaid reasonable cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as operating costs, but recognized by Medicare principles as allowable costs will be included in the total reasonable costs. Other allowable costs include, but are not necessarily limited to, physician's component which was combined-billed, capital costs, ambulance costs, excess costs, carry-forwards and medical education costs. (3-30-07)

22. **Principal Year**. The principal year is the period from which the Medicaid Inpatient Operating Cost Limit is derived. (3-30-07)

a. For inpatient services rendered on or after November 1, 2002, the principal year is the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare cost report or its equivalent is prepared for Medicaid cost settlement. (3-30-07)

b. For inpatient services rendered on or after January 1, 2007, the principal year is the provider's fiscal year ending in calendar year 2003 and every subsequent fiscal year-end in which a finalized Medicare cost report, or its equivalent, is prepared for Medicaid cost settlement. (3-30-07)

23. **Public Hospital**. For purposes of Subsection 405.03.b. of these rules, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (3-30-07)

24. **Reasonable Costs**. Except as otherwise provided in Section 405.03 of these rules, reasonable costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Medicaid cost limit. (3-30-07)

25. **Reimbursement Floor Percentage**. The floor calculation for hospitals with more than forty (40) beds is ~~*eighty-one*~~ seventy-seven and ~~*a half*~~ four-tenths percent (~~*81.5*~~ 77.4%) of Medicaid costs, and the floor calculation for hospitals with forty (40) or fewer beds is ninety-~~*six*~~one and ~~*a half*~~ seven-tenths percent (~~*96.5*~~ 91.7%). ~~*(4-2-08)*~~(1-1-09)T

26. **TEFRA**. TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (3-30-07)

27. **Uninsured Patient Costs**. For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment Amount, only inpatient costs of uninsured patients will be considered. An inpatient with insurance but no covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient. (3-30-07)

28. **Upper Payment Limit**. The Upper Payment Limit for hospital services is defined in the Code of Federal Regulations. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0902

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; and House Bill No. 123, 2009 Legislature.

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 15, 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:

These rules are being amended in response to statutory changes made during the 2009 Legislative session under House Bill No. 123. Cost savings under these rule changes will be realized by using private hospital provider taxes to match federal funds for disproportionate share (DSH) payments to private hospitals.

Medicaid DSH payments to hospitals are based on the results of an annual survey. This rule change will eliminate out-of-state providers from receiving DSH payments.

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:

This rulemaking is necessary to comply with House Bill No. 123, passed during the 2009 Legislative session.

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:

The projected fiscal impact is a total savings of $5,900,000; this includes state funds only. These savings are already reflected in the State Fiscal Year 2010 appropriation.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 67-5220(2), negotiated rulemaking was not conducted because this rule is being written to comply with House Bill No. 123, passed during the 2009 Legislative session

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sheila Pugatch at (208) 364-1817.

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 22, 2009.

DATED this 4th day of June, 2009.

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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0309-0902

405. INPATIENT HOSPITAL SERVICES - PROVIDER REIMBURSEMENT.
Under the Medicaid provisions of the Social Security Act, in reimbursing hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of inpatient services in accordance with the procedures detailed under this Section of rule. The upper limits observed by the Department in reimbursing each individual hospital must not exceed the payment that would be determined as a reasonable cost under the policies, definitions and procedures observed under Medicare (Title XVIII) principles of cost reimbursement. (3-30-07)

01. Exemption of New Hospitals. A hospital that has operated as the type of facility for which it is certified (or the equivalent thereof) under present and previous ownership for less than three (3) full years will be paid in accordance with the Title XVIII principles of reasonable cost reimbursement, including those provisions applicable to new providers for the carryover and recovery of unreimbursed costs, in accordance with 42 CFR Section 413.64. (3-30-07)

02. Medicaid Inpatient Operating Cost Limits. The following describe the determination of inpatient operating cost limits. (3-30-07)

a. Medicaid Cost Limits for Dates of Service Prior to a Current Year. The reimbursable reasonable costs for services rendered prior to the beginning of the principal year, but included as prior period claims in a subsequent period's cost report, will be subject to the same operating cost limits as the claims under settlement. (3-30-07)

b. Application of the Medicaid Cost Limit. In the determination of a hospital's reasonable costs for inpatient services rendered after the effective date of a principal year, a Hospital Inflation Index, computed for each hospital's fiscal year end, will be applied to the operating costs, excluding capital costs and other allowable costs as defined for the principal year and adjusted on a per diem basis for each subsequent year under the Hospital Inflation Index. (3-30-07)

i. Each inpatient routine service cost center, as reported in the finalized principal year end Medicare cost report, will be segregated in the Medicaid cost limit calculation and assigned a share of total Medicaid inpatient ancillary costs. The prorated ancillary costs will be determined by the ratio of each Medicaid routine cost center's reported costs to total Medicaid inpatient routine service costs in the principal year. (3-30-07)

ii. Each routine cost center's total Medicaid routine service costs plus the assigned share of Medicaid inpatient ancillary costs of the principal year will be divided by the related Medicaid patient days to identify the total costs per diem in the principal year. (3-30-07)

(1) The related inpatient routine service cost center's per diem capital and graduate medical education costs plus the prorated share of inpatient ancillary capital costs will be subtracted from the per diem amount identified in Subsection 405.02.b.ii. of this rule to identify each inpatient routine service cost center per diem cost limit in the principal year. (3-30-07)

(2) If a provider did not have any Medicaid inpatient utilization or render any Medicaid inpatient services in an individual inpatient routine service cost center in the fiscal year serving as the principal year, the principal year for only those routine cost centers without utilization in the provider's principal year will be appropriately calculated using the information available in the next subsequent year in which Medicaid utilization occurred. (3-30-07)

iii. Each routine cost center's cost per diem for the principal year will be multiplied by the Hospital Inflation Index for each subsequent fiscal year. (3-30-07)

iv. The sum of the per diem cost limits for the Medicaid inpatient routine service cost centers of a hospital during the principal year, as adjusted by the Hospital Inflation Index, will be the Medicaid cost limit for operating costs in the current year. (3-30-07)

(1) At the date of final settlement, reimbursement of the Medicaid current year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem operating costs as adjusted for each subsequent fiscal year after the principal year through the current year by the Hospital Inflation Cost Index.(3-30-07)

(2) Providers will be notified of the estimated inflation index periodically or Hospital Inflation Index (CMS Market Basket Index) prior to final settlement only upon written request. (3-30-07)

03. Adjustments to the Medicaid Cost Limit. A hospital's request for review by the Department concerning an adjustment to or exemption from the cost limits imposed under the provisions set forth in Section 405 of this chapter of rules, must be granted under the following circumstances: (3-30-07)

a. Adjustments. Because of Extraordinary Circumstances. Where a provider's costs exceed the Medicaid limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (3-30-07)

b. Reimbursement to Public Hospitals. A Public Hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (3-30-07)

c. Adjustment to Cost Limits. A hospital is entitled to a reasonable increase in its Medicaid Cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case- mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid inpatients since the principal year. Any hospital making such showing is entitled to an increase commensurate with the increase in per diem costs. (3-30-07)

i. The Medicaid operating cost limit may be adjusted by multiplying cost limit by the ratio of the current year's Case-Mix Index divided by the principal year's Case-Mix Index. (3-30-07)

ii. The contested case procedure set for forth in IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings,” is available to larger hospitals seeking such adjustments to their Medicaid Cost Limits. (3-30-07)

d. Medicaid Operating and Capital and Medical Education Costs. All hospitals will be guaranteed at least eighty percent (80%) of their total allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. (3-30-07)

i. With the exception of Subsection 405.03.d.ii. of this rule, at the time of final settlement, the allowable Medicaid costs related to each hospital's fiscal year end will be according to the Reimbursement Floor Percentage. (3-30-07)

ii. In the event that CMS informs the Department that total hospital payments under the Inpatient Operating Cost Limits exceed the inpatient Upper Payment Limit, the Department may reduce the guaranteed

percentage defined as the Reimbursement Floor Percentage to hospitals. (3-30-07)

e. Adjustment to the Proration of Ancillary Costs in the principal year. Where the provider asserts that the proration of ancillary costs does not adequately reflect the total Medicaid cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary services provided to each participant for each type of patient day during each participant's stay during the principal year. The provider will be granted this adjustment only once upon appeal for the first cost reporting year that the limits are in effect. (3-30-07)

04. Payment Procedures. The following procedures are applicable to in-patient hospitals: (3-30-07)

a. The participant's admission and length of stay is subject to preadmission, concurrent and retrospective review by a Quality Improvement Organization (QIO) designated by the Department. QIO review will be governed by provisions of the QIO Idaho Medicaid Provider Manual as amended. If such review identifies that an admission or continued stay is not medically necessary, then no Medicaid payment will be made. Failure to obtain a timely QIO review as required by Section 405 of this chapter of rules, and as outlined in the QIO Idaho Medicaid Provider Manual as amended, will result in the QIO conducting a late review. After a QIO review has determined that the hospital stay was medically necessary, Medicaid will assess a late review penalty to the hospital as outlined in Subsection 405.05 of this rule. (3-30-07)

i. All admissions are subject to QIO review to determine if continued stay in inpatient status is medically necessary. A QIO continued stay review is required when the participant's length of stay exceeds the number of days certified by the QIO. If no initial length of stay certification was issued by the QIO, a QIO continued stay review is required when the admission exceeds a number of days as specified by the Department. (3-30-07)

ii. Reimbursement for services originally identified as not medically necessary by the QIO will be made if such decision is reversed by the appeals process required in IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (3-30-07)

iii. Absent the Medicaid participant's informed decision to incur services deemed unnecessary by the QIO, or not authorized by the QIO due to the negligence of the provider, no payment for denied services may be obtained from the participant. (3-30-07)

b. In reimbursing licensed hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of semi-private rates for in-patient hospital care as set forth in this rule, unless an exception applies as stated in Section 402 of these rules. The upper limits for payment must not exceed the payment which would be determined as reasonable cost using the Title XVIII standards and principles. (3-30-07)

05. Hospital Penalty Schedule. (3-30-07)

a. A request for a preadmission and/or continued stay QIO review that is one (1) day late will result in a penalty of two hundred and sixty dollars ($260), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

b. A request for a preadmission and/or continued stay QIO review that is two (2) days late will result in a penalty of five hundred and twenty dollars ($520), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

c. A request for a preadmission and/or continued stay QIO review that is three (3) days late will result in a penalty of seven hundred and eighty dollars ($780), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

d. A request for a preadmission and/or continued stay QIO review that is four (4) days late will result in a penalty of one thousand and forty dollars ($1,040), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

e. A request for a preadmission and/or continued stay QIO review that is five (5) days late or greater

will result in a penalty of one thousand three hundred dollars ($1,300), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

06. AND Reimbursement Rate. Reimbursement for an AND will be made at the weighted average Medicaid payment rate for all Idaho nursing facilities for routine services, as defined per 42 CFR 447.280(a)(1), furnished during the previous calendar year. ICF/MR rates are excluded from this calculation. (3-30-07)

a. The AND reimbursement rate will be calculated by the Department by March 15 of each calendar year and made effective retroactively for dates of service on or after January 1 of the respective calendar year. (3-30-07)

b. Hospitals with an attached nursing facility will be reimbursed the lesser of their Medicaid per diem routine rate or the established average rate for an AND; and (3-30-07)

c. The Department will pay the lesser of the established AND rate or a facility's customary hospital charge to private pay patients for an AND. (3-30-07)

07. Reimbursement for Services. Routine services as addressed in Subsection 405.08 of this rule include all medical care, supplies, and services which are included in the calculation of nursing facility property and nonproperty costs as described in these rules. Reimbursement of ancillary services will be determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

08. Hospital Swing-Bed Reimbursement. The Department will pay for nursing facility care in certain rural hospitals. Following approval by the Department, such hospitals may provide service to participants in licensed hospital ("swing") beds who require nursing facility level of care. (3-30-07)

a. Facility Requirements. The Department will approve hospitals for nursing facility care provided to eligible participants under the following conditions: (3-30-07)

i. The Department's Licensure and Certification Section finds the hospital in conformance with the requirements of 42 CFR 482.66 "Special Requirements" for hospital providers of long-term care services ("swingbeds"); and (3-30-07)

ii. The hospital is approved by the Medicare program for the provision of "swing-bed" services; and (3-30-07)

iii. The facility does not have a twenty-four (24) hour nursing waiver granted under 42 CFR 488.54(c); and (3-30-07)

iv. The hospital must not have had a swing-bed approval terminated within the two (2) years previous to application for swing-bed participation; and (3-30-07)

v. The hospital must be licensed for less than one hundred (100) beds as defined by 42 CFR 482.66(a)(1) for swing-bed purposes; and (3-30-07)

vi. Nursing facility services in swing-beds must be rendered in beds used interchangeably to furnish hospital or nursing facility-type services. (3-30-07)

b. Participant Requirements. The Department will reimburse hospitals for participants under the following conditions: (3-30-07)

i. The participant is determined to be entitled to such services in accordance with IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled"; and (3-30-07)

ii. The participant is authorized for payment in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 222.02. (3-30-07)

c. Reimbursement for "Swing-Bed" Patient Days. The Department will reimburse swing-bed hospitals on a per diem basis utilizing a rate established as follows: (3-30-07)

i. Payment rates for routine nursing facility services will be at the weighted average Medicaid rate per patient day paid to hospital-based nursing facility/ICF facilities for routine services furnished during the previous calendar year. ICF/MR facilities' rates are excluded from the calculations. (3-30-07)

ii. The rate will be calculated by the Department by March 15 of each calendar year. The rate will be based on the previous calendar year and effective retroactively for dates of service on or after January 1 of the respective year. (3-30-07)

iii. The weighted average rate for nursing facility swing-bed days will be calculated by dividing total payments for routine services, including patient contribution amounts but excluding miscellaneous financial transactions relating to prior years, by total patient days for each respective level of care occurring in the previous calendar year. (3-30-07)

iv. Routine services include all medical care, supplies, and services which are included in the calculation of nursing facility property and nonproperty costs as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 225.01. (3-30-07)

v. The Department will pay the lesser of the established rate, the facility's charge, or the facility's charge to private pay patients for "swing-bed" services. (3-30-07)

vi. Reimbursement of ancillary services not included in the nursing facility rates furnished for extended care services will be billed and determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

vii. The number of swing-bed days that may be reimbursed to a provider in a twelve (12) month period will be limited to the greater of one thousand ninety five (1,095) days which may be prorated over a shorter fiscal period or, fifteen percent (15%) of the product of the average number of available licensed beds in the hospital in the period and the number of days in the fiscal period. (3-30-07)

d. Computation of "Swing-Bed" Patient Contribution. The computation of the patient's contribution of swing-bed payment will be in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 224. (3-30-07)

09. Adjustment for Disproportionate Share Hospitals (DSH). All Idaho hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. ~~*(3-30-07)*~~(7-1-09)T

a. DSH Survey Requirements. The Department will send each hospital a DSH survey on or before January 31 of each calendar year. The DSH survey must be returned to the Department on or before May 31 of the same calendar year. A hospital will not receive a DSH payment if the survey is not returned by the deadline, unless good cause is determined by the Department. No later than July 15 of each calendar year, the Department must notify each hospital of their calculated DSH payment and notify each hospital of its preliminary calculated distribution amount. A hospital may file an amended survey to complete, correct, or revise the original DSH survey by submitting the amended survey and supporting documentation to the Department no later than thirty (30) days after the notice of the preliminary DSH calculation is mailed to the hospital. The state's annual DSH allotment payment will be made by September 30 of the same calendar year based on the final DSH surveys and Department data. (3-30-07)

b. Mandatory Eligibility. Mandatory Eligibility for DSH status will be provided for hospitals which: (3-30-07)

i. Meet or exceed the disproportionate share threshold as defined in Subsection 400.13 of these rules. (3-30-07)

ii. Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services~~*, and have provided such services to individuals entitled to such services under the Idaho Medical Assistance Program for the reporting period*~~. ~~*(3-30-07)*~~(7-1-09)T

(1) Subsection 405.09.b.ii. of this rule does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (3-30-07)

(2) Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (3-30-07)

iii. The MUR will not be less than one percent (1%). (3-30-07)

iv. If an Idaho hospital exceeds both disproportionate share thresholds, as described in Subsection 400.13 of these rules, and the criteria of Subsections 405.09.b.ii. and 405.09.b.iii. of this rule are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 405.09.b.vi. through 405.09.b.x. of this rule. ~~*(3-30-07)*~~(7-1-09)T

~~*v. In order to qualify for a DSH payment, a hospital located outside the state of Idaho must: (3-30-07)*~~

~~*(1) Qualify under the Mandatory DSH requirements set forth in Subsection 405.09 of this chapter of rules; (3-30-07)*~~

~~*(2) Qualify for DSH payments from the state in which the hospital is located; and (3-30-07)*~~

~~*(3) Have fifty thousand dollars ($50,000) or more in covered charges for services provided to Idaho participants during the year covered by the applicable DSH survey. (3-30-07)*~~

v~~*i*~~. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals will receive a DSH payment equal to two percent (2%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

vi~~*i*~~. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

vii~~*i*~~. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

~~*ix*~~viii. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

ix. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)

~~***c.*** *Out-of-State Hospitals Eligible for Mandatory DSH Payments. Out-of-state hospitals eligible for Mandatory DSH payments will receive DSH payments equal to one half (1/2) of the percentages provided for Idaho hospitals in Subsections 405.09.b.iv. through 405.09.b.x. of this rule. (3-30-07)*~~

~~***d***~~**c.** Deemed Disproportionate Share Hospital (DSH). All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 405.09.b. of this rule, will be designated a Deemed Disproportionate

Share Hospital. ~~*Out of state hospitals will not be designated as Deemed DSH.*~~ The disproportionate share payment to a Deemed DSH hospital will be the greater of: ~~*(3-30-07)*~~(7-1-09)T

i. Five dollars ($5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or (3-30-07)

ii. An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH allotment amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (3-30-07)

~~*e*~~**d.** Insufficient DSH Allotment Amounts. When the DSH allotment amount is insufficient to make the aggregate amount of DSH payments to each DSH hospital, payments to each hospital will be reduced by the percentage by which the DSH allotment amount was exceeded. (3-30-07)

~~*f*~~**e.** DSH Payments Will Not Exceed Costs. A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the State Plan or were uninsured for health care services provided during the year. (3-30-07)

i. Payments made to a hospital for services provided to indigent patients by a state or a unit of local government within a state will not be considered a source of third party payment. (3-30-07)

ii. Claims of uninsured costs which increase the maximum amount which a hospital may receive as a DSH payment must be documented. (3-30-07)

~~*g*~~**f.** DSH Will be Calculated on an Annual Basis. A change in a provider's allowable costs as a result of a reopening or appeal will not result in the recomputation of the provider's annual DSH payment. (3-30-07)

10. Out-of-State Hospitals. (3-30-07)

a. Cost Settlements for Certain Out-of-State Hospitals. Hospitals not located in the state of Idaho will have a cost settlement computed with the state of Idaho if the following conditions are met: (3-30-07)

i. Total inpatient and outpatient covered charges are more than fifty thousand dollars ($50,000) in the fiscal year; or (3-30-07)

ii. When less than fifty thousand dollars ($50,000) of covered charges are billed to the state by the provider, and a probable significant underpayment or overpayment is identifiable, and the amount makes it administratively economical and efficient for cost settlement to be requested by either the provider or the state, a cost settlement will be made between the hospital and the Department. (3-30-07)

b. Payment for Hospitals Without Cost Settlement. Those out-of-state hospitals not cost settling with the state will have annually adjusted rates of payment no greater than seventy-five percent (75%) for inpatient covered charges and no greater than eighty percent (80%) of outpatient covered charges or, the Department's established fee schedule for certain outpatient services. These rates represent average inpatient and outpatient reimbursement rates paid to Idaho hospitals. (3-30-07)

11. Institutions for Mental Disease (IMD). Except for individuals under twenty-two (22) years of age which are contracted with the Department under the authority of the Division of Family and Community Services and certified by the Health Care Financing Administration, no services related to inpatient care will be covered when admitted to a freestanding psychiatric hospital. (3-30-07)

12. Audit Function. Under a common audit agreement, the Medicare Intermediary may perform any audit required for both Title XVIII and Medicaid purposes. The Department may elect to perform an audit even though the Medicare Intermediary does not choose to audit the facility. (3-30-07)

13. Adequacy of Cost Information. Cost information as developed by the provider must be current, accurate, and in sufficient detail and in such form as needed to support payments made for services rendered to

participants. This includes all ledgers, books, reports, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.), which pertain to the determination of reasonable costs, leaving an audit trail capable of being audited. Financial and statistical records will be maintained in a consistent manner from one (1) settlement period to another. (3-30-07)

14. Availability of Records of Hospital Providers. A participating hospital provider of services must make available to the Department in the state in which the facility is licensed, the provider's fiscal and other necessary records for the purpose of determining its ongoing record keeping capability and to ascertain information pertinent to the determination of the proper amount of program payments due the provider. (3-30-07)

15. Interim Cost Settlements. The Department may initiate or a hospital may request an interim cost settlement based on the Medicare cost report as submitted to the Medicare Intermediary. (3-30-07)

a. Cost Report Data. Interim settlement cost report data will be adjusted to reflect Medicaid payments and statistical summary reports sent to providers before the filing deadline. (3-30-07)

b. Hard Copy of Cost Report. Hospitals which request to undergo interim cost settlement with Idaho Medicaid must submit a hard copy of the Medicare cost report to the Department upon filing with the Intermediary. (3-30-07)

c. Limit or Recovery of Payment. The Department may limit a recovery or payment of an interim settlement amount up to twenty-five percent (25%) of the total settlement amount when the cost report information is in dispute. (3-30-07)

16. Notice of Program Reimbursement. Following receipt of the finalized Medicare cost report and the timely receipt of any other information requested by the Department to fairly cost settle with the provider, a certified letter with the return receipt requested will be sent to the provider which sets forth the amounts of underpayment or overpayment made to the provider. The notice of the results of the final retroactive adjustment will be sent even though the provider intends to request a hearing on the determination, or has appealed the Medicare Intermediary's determination of cost settlement. Where the determination shows that the provider is indebted to the Medicaid program because total interim and other payments exceed cost limits, the state will take the necessary action to recover overpayment, including the suspension of interim payments sixty (60) days after the provider's receipt of the notice. Such action of recovery or suspension will continue even after a request for an informal conference or hearing is filed with the state. If the hearing results in a revised determination, appropriate adjustments will be made to the settlement amount. (3-30-07)

a. Timing of Notice. The Department will make every effort to issue a notice of program reimbursement within twelve (12) months of receipt of the cost report from the Medicare Intermediary. (3-30-07)

b. Reopening of Completed Settlements. A Medicaid completed cost settlement may be reopened by the provider or the state within a three (3) year period from the date of the letter of notice of program reimbursement. The issues must have been raised, appealed and resolved through the reopening of the cost report by the Medicare Intermediary. Issues previously addressed and resolved by the Department's appeal process are not cause for reopening of the finalized cost settlement. (3-30-07)

17. Nonappealable Items. The formula for the determination of the Hospital Inflation Index, the principles of reimbursement which define allowable cost, non-Medicaid program issues, interim rates which are in compliance with state and federal rules, and the preliminary adjustments prior to final cost settlement determinations as supported by properly completed cost reports and audits must not be accepted as appealable items. (3-30-07)

18. Interim Reimbursement Rates. The interim reimbursement rates are reasonable and adequate to meet the necessary costs which must be incurred by economically and efficiently operated providers which provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. (3-30-07)

a. Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set

inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

b. Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon request for rate review by the provider. (3-30-07)

c. Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars ($100,000), the interim rate will be adjusted to account for half (½) of the difference. (3-30-07)

d. Unadjusted Rate. The Medicaid interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors. (3-30-07)

19. **Audits**. All financial reports are subject to audit by Departmental representatives in accordance with Section 305 of these rules. (3-30-07)

20. **Interim Reimbursement Rates**. The interim reimbursement rates are reasonable and adequate to meet the necessary costs which must be incurred by economically and efficiently operated providers which provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. (3-30-07)

a. Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

b. Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon request for rate review by the provider. (3-30-07)

c. Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars ($100,000), the interim rate will be adjusted to account for half (½) of the difference. (3-30-07)

d. Unadjusted Rate. The Medicaid interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors. (3-30-07)

21. **Audits**. All financial reports are subject to audit by Departmental representatives in accordance with Section 305 of these rules. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0903

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; and HB 123 (2009).

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 15, 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:

These amendments are in response to the passage of HB 123 during the 2009 Legislative session. Cost savings under these rule changes will be realized through reductions in incentive payments to nursing facilities and reductions in percentage increases to the inflation index used to calculate the nursing facility daily reimbursement rate.

Nursing facilities are reimbursed with a daily rate that is adjusted for inflation and increased/decreased costs on an annual basis. This rule change will realize cost savings through establishing a capped incentive payment rate of $9.50 per patient day, reduce the daily reimbursement rate inflation index adjustment from 1% to 0% per year, reduce the inflation index adjustment to costs reported in a nursing facilities annual cost report for purposes of rate setting from 1% to 0%, and reduce the inflation index adjustment to annual cost limits from 2% to 1%.

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: This rulemaking is necessary to comply with HB 123 (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: 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:

The projected fiscal impact is a total savings of $3,479,363; this includes state funds and federal matching funds. The projected savings to the state general fund is approximately $724,751. These savings are already reflected in the State Fiscal Year 2010 appropriation.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 67-5220(2), negotiated rulemaking was not conducted because this rule is being written to comply with changes in Idaho statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Robert Kellerman at (208) 364-1994.

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 22, 2009.

DATED this 4th day of June, 2009.

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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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0310-0903

257. NURSING FACILITY - DEVELOPMENT OF THE RATE.
Nursing facility rates are prospective, with new rates effective July 1st of each year, and are recalculated annually with quarterly adjustments for case mix. The rate for a nursing facility is the sum of the cost components described in Subsection 257.04 through 257.09 of this rule. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges. (5-8-09)

01. Applicable Case Mix Index (CMI). The Medicaid CMI used in establishing each facility's rate is calculated based on the most recent assessment for each Medicaid resident in the nursing facility on the first day of the month of the preceding quarter (for example, assessments as of April 1are used to establish the CMI needed to establish rates for the quarter beginning July 1st). Facility-wide CMI is calculated based on the most recent assessment for all residents in the nursing facility. The CMI is recalculated quarterly and each nursing facility's rate is adjusted accordingly. A facility-wide CMI is also established each year by averaging four (4) calendar quarter CMIs for the cost reporting period from historical data to represent each fiscal quarter in the cost reporting period (for example, an October 1 CMI would represent the fiscal quarter ended September 30th). (3-19-07)

02. Applicable Cost Data. The cost data used in establishing the cost components of the rate calculation are from the audited or unaudited cost report which ended during the previous calendar year (for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 are used in setting rates effective July 1, 1999). The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (3-19-07)

03. Interim Rates. Nursing facilities with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (3-19-07)

04. Direct Care Cost Component. The direct care cost component of a nursing facility's rate is determined as follows: (3-19-07)

a. The direct care per diem cost limit applicable to the rate period for a nursing facility type (free-standing and urban hospital-based nursing facility or rural hospital-based nursing facility) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the nursing facility's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. (3-19-07)

b. The adjusted direct care per diem cost limit is compared to the nursing facility's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (3-19-07)

i. If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the nursing facility's facility-wide CMI for the cost reporting period, and then multiplied by the nursing facility's most recent

quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (3-19-07)

ii. If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the nursing facility's facility-wide CMI for the cost reporting period, then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (3-19-07)

05. Indirect Care Cost Component. The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect per diem cost limit for that type of provider -- free-standing and urban hospital-based nursing facilities, or rural hospital-based nursing facilities. (3-19-07)

06. Efficiency Incentive. The efficiency incentive is available to those providers, both free-standing and hospital-based, which have inflated per diem indirect care costs less than the indirect per diem cost limit for that type of provider. The efficiency incentive is calculated by multiplying the difference between the per diem indirect cost limit and the facility's inflated per diem indirect care costs by ~~*seventy*~~ fifty percent (~~7~~50%) not to exceed nine dollars and fifty cents ($9.50) per patient day. There is no incentive available to those facilities with per diem costs in excess of the indirect care cost limit, or to any facility based on the direct care cost component. ~~*(3-19-07)*~~(7-1-09)T

07. Costs Exempt From Limitation. Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 264 of these rules. (3-19-07)

08. Property Reimbursement. The property reimbursement component is calculated in accordance with Section 275 and Subsection 240.19 of these rules. (3-19-07)

09. Revenue Offset. Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 257 of these rules. (3-19-07)

258. NURSING FACILITY - COST LIMITS BASED ON COST REPORT.
Each July 1st cost limitations will be established for nursing facilities based on the most recent audited cost report with an end date of June 30th of the previous year or before. Calculated limitations will be effective for a one (1) year period, from July 1 through June 30th of each year, which is the rate year. (5-8-09)

01. Percentage Above Bed-Weighted Median. Prior to establishing the first “shadow rates” at July 1, 1999, the estimated Medicaid payments under the previous retrospective system for the year period from July 1, 1999, through June 30, 2000, will be calculated. This amount will then be used to model the estimated payments under the case mix system set forth in Sections 255 through 257 of these rules. The percentages above the bed-weighted median, for direct and indirect costs, will be established at a level that approximates the same amount of Medicaid expenditures as would have been produced by the retrospective system. The percentages will also be established to approximate the same distribution of total Medicaid dollars between the hospital-based and freestanding nursing facilities as existed under the retrospective system. Once the percentage is established, it will be used to calculate the limit by multiplying the bed-weighted median per diem direct cost times the calculated percentage for that class of provider. There will be a direct and indirect percentage that is applied to freestanding and urban hospital-based nursing facilities, and a higher direct and indirect percentage that is applied to rural hospital-based nursing facilities. Once established, these percentages will remain in effect for future rate setting periods. (3-19-07)

02. Direct Cost Limits. The direct cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be normalized and arrayed from high to low, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed. (3-19-07)

03. Indirect Cost Limits. The indirect cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be arrayed, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed. (3-19-07)

04. Limitation on Increase or Decrease of Cost Limits. Increases in the direct and indirect cost limits will be determined by the limitations calculated in the most recent base year, indexed forward each year from the midpoint of the base year to the midpoint of the rate year by the inflation factor plus ~~*two*~~ one percent (~~*2*~~1%) per annum. The calculated direct and indirect cost limits will not be allowed to decrease below the limitations effective in the base year. The maximum rate of growth on the cost limits, and the minimum cost limitation, will be examined by the oversight committee periodically to determine which factors to use in the calculation of the limitations effective in the new base year and forward. ~~*(5-8-09)*~~(7-1-09)T

05. Costs Exempt From Limitations. Costs exempt from limitations include property taxes, property insurance, and utilities. These costs will be reimbursed on a per diem basis and will not be included in the calculation of the direct or indirect care component. However, property taxes and property insurance will be subject to minimum occupancy levels as defined in Section 278 of these rules. (3-19-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0904

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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(b), 56-203(g), 56-203(i), 56-250 through 56-257; and 56-113, Idaho Code, as amended by HB 123 (2009).

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 15, 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:

These rules are being amended in response to statutory changes to Section 56-113, Idaho Code. Cost savings under these rule changes will be realized through a rate freeze for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR).

ICFs/MR are reimbursed with a daily rate that is adjusted for inflation and increased/decreased costs on an annual basis. This rule change will freeze the daily reimbursement rate so that ICFs/MR will be paid the same daily rate in state fiscal year 2010 as in state fiscal year 2009.

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: This rulemaking is necessary to comply with HB 123 (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: 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:

The projected fiscal impact is a total savings of $314,200; this includes state funds and federal matching funds. The projected savings to the state general fund is approximately $65,448. These savings are already reflected in the State Fiscal Year 2010 appropriation.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 67-5220, negotiated rulemaking was not conducted because this rule is being written to comply with changes to Idaho statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lourie Neal at (208) 287-1162.

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 22, 2009.

DATED this 4th day of June, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0310-0904

622. ICF/MR - PRINCIPLE PROSPECTIVE RATES.
Providers of ICF/MR facilities will be paid a per diem rate which, with certain exceptions, is not subject to an audit settlement. The per diem rate for a fiscal period will be based on audited historical costs adjusted for inflation. The provider will report these cost items in accordance with other provisions of this chapter or the applicable provisions of PRM consistent with this chapter. Sections 622 through 628 of these rules provide procedures and specifications necessary to implement the provisions and accomplish the objectives of the payment system for ICF/MR providers. Total payment will include the following components: Property reimbursement, capped costs, an efficiency increment, exempt costs, excluded costs. Except as otherwise provided in this section, ICF/MR providers will be reimbursed in state fiscal year 2010 (July 1, 2009 through June 30, 2010) at the same rate of reimbursement that was paid in state fiscal year 2009 (July 1, 2008 through June 30, 2009). ~~*(3-19-07)*~~(7-1-09)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.18 - RULES GOVERNING MEDICAID COST-SHARING

DOCKET NO. 16-0318-0901 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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, 56-239, and 56-240, Idaho Code, and Title XXI of the Social Security Act.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

WEDNESDAY JULY 8, 2009 6:00 p.m. MDT	THURSDAY JULY 9, 2009 7:00 p.m. PDT	THURSDAY JULY 16, 2009 5:00 p.m. MDT
State Office Bldg. 150 Shoup Ave. 2nd Floor Lg. Conf. Room Idaho Falls, ID	**DHW - Region 1 Office 1120 Ironwood Drive Suite 102, Lg. Conf. Room Coeur d'Alene, ID**	**DHW - Region III Office 3402 Franklin Road Sawtooth Room Caldwell, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In order to meet legislative intent for Medicaid cost containment in House Bill 322 for the state fiscal year 2010, the Department is implementing changes in this chapter to add a cost-sharing premium for Home Care for Certain Disabled Children (HCCDC) also known as Katie Beckett. These requirements implement cost-sharing in the form of a monthly payment based on family income that is remitted to the Department each month. Failure to pay will not affect the child's eligibility, but may result in collection procedures that are also being identified in these rules.

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:

These rule changes are needed to meet deadlines in governing law to implement cost containment measures for the state fiscal year 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:

This cost-sharing measure is required to meet 2010 Legislative intent language in House Bill 322.

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 cost savings for this rulemaking for SFY 2010 is estimated at $210,000 in state general funds. These savings are already reflected in the State Fiscal Year 2010 appropriation.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these cost saving measures are being required to meet legislative intent.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Robin Pewtress at (208) 364-1892.

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 22, 2009.

DATED this 4th day of June, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET 16-0318-0901

010. DEFINITIONS.

01. Co-Payment (Co-Pay). The amount a participant is required to pay to the provider for specified services. (3-19-07)

02. Cost-Sharing. A payment the participant or the financially responsible adult is required to make toward the cost of ~~his~~ the participant's health care. Cost-sharing includes both co-pays and premiums. ~~(4-6-05)~~(7-1-09)T

03. Department. The Idaho Department of Health and Welfare, or a person authorized to act on behalf of the Department. (3-19-07)

04. Federal Poverty Guidelines (FPG). The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services web site at http://aspe.hhs.gov/poverty/index.shtml. ~~(3-19-07)~~(7-1-09)T

05. Medical Assistance. Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-19-07)

06. Participant. A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)

07. Premium. A regular and periodic charge or payment for health coverage. (4-6-05)

08. Social Security Act. 42 U.S.C. 101 et seq., authorizing, in part, federal grants to the states for medical assistance to eligible low-income individuals. (3-19-07)

09. State. The state of Idaho. (4-6-05)

10. 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. (7-1-09)T

11. **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. (7-1-09)T

011. -- 024. (RESERVED).

025. ~~*PARTICIPANTS*~~ EXEMPTIONS FROM COST-SHARING.

01. **Native American and Alaskan Native Participants**. Native American and Alaskan Native participants are exempt from the cost-sharing provisions of Sections 200 and 300 of these rules. The participant must declare his race to the Department to receive this exemption. ~~*(3-19-07)*~~(7-1-09)T

02. **Title XXI Participants**. Participants funded through Title XXI and receiving Medicaid Enhanced Plan benefits are exempt from the cost-sharing provisions of Section 200 of these rules. (7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

200. PREMIUMS.

01. Family Income Above 133% of FPG. (7-1-09)T

a. Each participant funded by Title XXI and with family income ~~*at or*~~ above one hundred thirty-three percent (133%) of the ~~*Federal Poverty Guideline (*~~current FPG~~)~~ and equal to or less than one hundred fifty percent (150%) of the FPG must pay a monthly premium of ten dollars ($10) to the Department. ~~*(3-19-07)*~~(7-1-09)T

b. Each participant funded by Title XIX and with family income above one hundred thirty-three percent (133%) of the current FPG and equal to or less than one hundred fifty percent (150%) of the FPG is not required to pay a premium. (7-1-09)T

02. Family Income Above 150% of FPG. Each participant with family income above one-hundred fifty percent (150%) of the ~~*Federal Poverty Guideline (*~~current FPG~~)~~ and equal to or less than one-hundred eighty-five percent (185%) of the FPG must pay a monthly premium of fifteen dollars ($15) to the Department. ~~*(3-19-07)*~~(7-1-09)T

03. **Family Income Above 185% of FPG**. Each participant with family income above one-hundred eighty-five percent (185%) of the current FPG and equal to or less than three hundred percent (300%) of the FPG must pay a monthly premium equal to three percent (3%) of the family income to the Department. (7-1-09)T

04. **Family Income Above 300% of FPG**. Each participant with family income above three-hundred percent (300%) of the current FPG must pay a monthly premium of four and a one-half percent (4.5%) of the family income to the Department. (7-1-09)T

05. **Failure to Provide Information**. The family must provide the Department with information needed to determine family income and household size. Failure to provide information will subject the participant to a monthly premium equal to the average monthly cost of coverage for participants receiving Medicaid Enhanced Plan benefits. (7-1-09)T

0~~3~~6. Failure to Pay Premium. (7-1-09)T

a. ~~*A participant's f*~~Failure to pay the premium can make the participant ineligible for coverage unless the participant is eligible as a "Certain Disabled Child" described in IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." ~~*(3-19-07)*~~(7-1-09)T

b. When a participant is eligible as a "Certain Disabled Child," failure to pay the premium can result in formal collection proceedings against the parent, parents, or any other adult financially responsible for the child. The amount owed determines in which court the Department pursues the debt collection of the delinquency. (7-1-09)T

0~~4~~7. Department Responsibilities. (3-19-07)

a. A participant must not be assessed premiums during the time initial eligibility is determined. Obligation for premium payments does not begin for at least sixty (60) days after receipt of application. (3-19-07)

b. A participant must not be assessed premiums for extra months of eligibility received due solely to the Department's late review of continuing eligibility. (3-19-07)

c. A participant must not be assessed premiums for months of retroactive eligibility. (3-19-07)

d. The Department is required to routinely notify a participant of his premium payment obligations including any delinquencies, if applicable. (3-19-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.10 - RULES GOVERNING THE COMMUNITY SERVICES BLOCK GRANT PROGRAM

DOCKET NO. 16-0410-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 1, 2009.

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; the Community Services Block Grant Act, 42 USC 9901, et seq.; and the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5, Title VIII (3).

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 Wednesday, July 15, 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 Community Services Block Grant (CSBG) is a federal grant that is administered by the Department; its funds are managed under contracts with local Community Action Agencies. Block grant funds are used for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient.

The American Recovery and Reinvestment Act of 2009 (ARRA) raised the income limit for CSBG program eligibility to 200% of the federal poverty guidelines. As provided for under this change to the ARRA, this rulemaking increased the income limit for CSBG program eligibility from 125% to 200% of the federal poverty guidelines. This increase in the income limit will allow the program to reach many more Idaho families with help urgently needed in this recession.

In addition, this rulemaking updates the standard “required sections” of this chapter of rule and makes other clerical changes to conform to the current requirements of the Idaho Department of Administration’s Office of Administrative Rules (OAR).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it confers a benefit.

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: 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 related to this rulemaking.

The increase in eligibility to 200% of federal poverty guidelines will allow the Department to fully obligate and spend the Community Services Block Grant economic stimulus award made available under the American Reinvestment and Recovery Act (ARRA). These monies are 100% federal, and spending authority for this award was provided to the Department by the 2009 Legislature.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to implement provisions of the ARRA.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Chris Baylis at (208) 334-5742.

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 Wednesday, July 22, 2009.

DATED this 29th day of May, 2009.

Tamara Prisock
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P.O. Box 83720, Boise, ID 83720-0036
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dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0410-0901

000. LEGAL AUTHORITY.
Sections 56-202 and 56-203, Idaho Code, authorize the Idaho Department of Health and Welfare to enter into contracts with the federal government to carry out the purposes of the Community Services Block Grant Act, 42 USC 9901, et seq. ~~*(3-30-01)*~~(4-1-09)T

001. TITLE AND SCOPE.

01. Title. The~~se~~ title of these rules ~~*are cited as Idaho Department of Health and Welfare,*~~ is IDAPA 16.04.10, "Rules Governing the Community Services Block Grant Program." ~~*(3-30-01)*~~ (4-1-09)T

02. Scope. These rules provide standards for the administration of the Community Services Block Grant Program, as authorized by the Community Services Block Grant Act, as amended under 42 USC 9901, et seq. ~~*(3-30-01)*~~(4-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.
Administrative ~~*A*~~appeals are governed by ~~*Idaho Department of Health and Welfare Rules,*~~ the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ~~*(3-30-01)*~~(4-1-09)T

004. INCORPORATION BY REFERENCE.
~~*There are none in this chapter*~~ No documents have been incorporated by reference into these rules. ~~*(3-30-01)*~~(4-1-09)T

Existing Section 005 has been moved to Section 010.

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. (4-1-09)T

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. (4-1-09)T

03. **Street Address**. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-1-09)T

04. **Telephone**. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-1-09)T

05. **Internet Website**. The Department's internet website is found at http://www.healthandwelfare.idaho.gov. (4-1-09)T

~~***006. ABBREVIATIONS.***~~

~~***01. CSBG**. Community Services Block Grant.* (3-30-01)~~

~~***02. HHS**. The United States Department of Health and Human Services.* (3-30-01)~~

~~***03. SEOG**. Supplemental Education Opportunity Grants.* (3-30-01)~~

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. **Confidential Records**. Disclosure of 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." (4-1-09)T

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. (4-1-09)T

007. -- 009. (RESERVED).

010~~5~~. DEFINITIONS.

01. **CSBG**. Community Services Block Grant. (4-1-09)T

0~~1~~2. **Community Action Agency**. A private, non-profit organization serving the low-income population in specified counties of the state with which the Idaho Department of Health and Welfare has contracted for the provision of CSBG services. (3-30-01)

0~~2~~3. **Department**. The Idaho Department of Health and Welfare. (3-30-01)

0~~3~~4. **Earned Income**. Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit, or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. ~~*(3-30-01)*~~(4-1-09)T

0~~4~~5. **Eligible Entity**. A private, non-profit organization which is a community action agency or a migrant or seasonal farm worker organization receiving CSBG funding before October 27, 1998, or designated by the Department as an eligible entity for an unserved area after October 27, 1998, and which is governed by a tripartite board, as defined in ~~*Subsection 005.06*~~ this rule. ~~*(3-30-01)*~~(4-1-09)T

06. **Federal Poverty Guidelines (FPG)**. The poverty guidelines issued annually by the Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human

Services web site at http://aspe.hhs.gov/poverty/index.shtml. (4-1-09)T

07. **HHS**. The United States Department of Health and Human Services. (4-1-09)T

0~~5~~8. **Low-Income and Poor Participants**. Those persons receiving or eligible to receive CSBG services who live in households having an income at or below ~~one~~ two hundred ~~twenty-five~~ percent (~~125~~ 200%) of the federal poverty guidelines. ~~(3-30-01)~~(4-1-09)T

0~~6~~9. **Tripartite Board**. A board, selected by an eligible entity, which participates in the development, planning, implementation, and evaluation of the community services block grant program, composed as follows: (3-30-01)

a. One-third (1/3) of the board members are elected public officials, currently holding office, or their representatives. Appointed public officials or their representatives will meet this requirement if the number of elected officials available and willing to serve is less than one-third (1/3) of the board membership. (3-30-01)

b. At least one-third (1/3) of the board members are representatives of low-income individuals and families, living in the neighborhoods they serve, chosen by democratic selection procedures. (3-30-01)

c. The remaining board members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served. (3-30-01)

~~07~~10. **Unearned Income**. Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (3-30-01)

0~~07~~11. -- 126. (RESERVED).

127. INCOME ELIGIBILITY REQUIREMENTS.
Assistance under this program is limited to participant households with countable income at or below ~~one~~ two hundred ~~twenty-five~~ percent (~~125~~ 200%) of the federal ~~P~~poverty ~~G~~guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(~~s~~2)~~, effective thirty (30) days after publication~~. ~~(3-30-01)~~(4-1-09)T

01. **Countable Income**. All earned and unearned income is counted in determining eligibility, unless specifically excluded by rule. (3-30-01)

02. **Income Not Counted**. For eligibility purposes, the following types of income are not counted. (3-30-01)

a. Benefit payments from Medicare Insurance. (3-30-01)

b. State cash assistance payments. (3-30-01)

c. Child care subsidy payments. (3-30-01)

d. Private loans made to the participant or the household. (3-30-01)

e. Assets withdrawn from a personal bank account. (3-30-01)

f. Sale of real property if reinvested within three (3) calender months. (3-30-01)

g. Lump sum payments from an IRA. (3-30-01)

h. Income tax refunds. (3-30-01)

i. Income from capital gains. (3-30-01)

j. Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than one hundred dollars ($100). (3-30-01)

k. Wages or allowances paid to a live-in attendant for care of a disabled person. (3-30-01)

l. Interest posted to a bank account. (3-30-01)

m. Monies for educational purposes from ~~*NSDL*~~ the federal Perkins/National Direct Student Loan program, college work-study programs, state student incentive grants, ~~*SEOG*~~ Supplemental Education Opportunity Grants, Pell, guaranteed student loans, and supplemental grants funded under Title IV, A-2. ~~*(3-30-01)*~~(4-1-09)T

n. Monies from the VA-GI Bill for Education. (3-30-01)

o. Department of Health and Welfare adoption subsidies. (3-30-01)

p. Compensation to volunteers under the Older Americans Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, and the Title V Senior Employment Program. (3-30-01)

q. Payments made by a third party, non-household member for the household, such as for child care, energy assistance, shelter, food and clothing assistance. (3-30-01)

r. Value of food stamps or donated food. (3-30-01)

s. Utility allowance. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

203. DESIGNATION AND REDESIGNATION OF ELIGIBLE ENTITIES IN UNSERVED AREAS.

01. Qualified Organization in or near Area. The following organizations may apply for and be designated as eligible entities to provide services in any geographic area which stops being served by an eligible entity. (3-30-01)

a. An eligible entity or other private, nonprofit organization in the unserved area, capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this program. (3-30-01)

b. A private, nonprofit eligible entity located adjacent to or near the unserved area that is already providing related services in the unserved area. If designated, such entity would have to add additional board members to ensure adequate representation of the unserved area. (3-30-01)

02. Special Consideration. An organization with demonstrated effectiveness in meeting the goals and purposes of this program will receive the designation. Eligible entities providing related services in the unserved area, consistent with the needs identified by a community-needs assessment, may be given priority. (3-30-01)

03. No Qualified Organization in or near Area. A political subdivision of the State may serve as an eligible entity for the area if no qualified private, nonprofit organization is available. The entity must administer the program through a tripartite board, as defined in S~~*ubs*~~ection ~~*004.06*~~ 010 of these rules, or through another approved mechanism to assure decision making and participation by low-income individuals in the development, planning, implementation, and evaluation of this program. ~~*(3-30-01)*~~(4-1-09)T

204. -- 299. (RESERVED).

300. APPLICATION PROCESS.

Applications ~~*will*~~ must be received by the Department of Health and Welfare, Division of Welfare, P.O. Box 83720, 450 W. State Street, Boise, ID 83720-0036, no later than 5 p.m., ninety (90) days before the beginning of the federal fiscal year. Projects ~~*shall*~~ must be designed and funded to operate for one (1) twelve-month (12) period. ~~*(3-30-01)*~~(4-1-09)T

301. -- 374. (RESERVED).

375. APPLICATION.
An original and one (1) copy of an application ~~*shall*~~ must be submitted to the Department's Division of Welfare and ~~*shall*~~ must include the following items: ~~*(3-30-01)*~~(4-1-09)T

01. Face Sheet. CSBG Application Face Sheet, describing general information about the entity and the application. (3-30-01)

02. Budget. A budget for the period of the grant, on forms provided by the Department. (3-30-01)

03. Causes of Poverty. The results of the most recent community-needs assessment. (3-30-01)

04. Service Plan. A description of how the agency will carry out the program. (3-30-01)

05. Work Program. Services to be performed and estimated number of participants. (3-30-01)

06. Client Characteristics Report. Demographic data on participants. (3-30-01)

07. Outcome Measures. How the entity will determine the success of services. (3-30-01)

08. Assurances and Certifications. Pledge by the entity to meet program requirements. (3-30-01)

376. -- 399. (RESERVED).

400. AUDIT.
Projects funded by CSBG ~~*shall be*~~ are subject to an annual audit~~,~~ of a scope and depth defined by the Department. The Department may join with other interested parties to obtain a single audit of the eligible entity. ~~*(3-30-01)*~~(4-1-09)T

401. -- 599. (RESERVED).

600. CORRECTIVE ACTION, TERMINATION, OR REDUCTION OF FUNDING.

01. Determination. If an eligible entity fails to comply with the terms of an agreement, or the State ~~*p*~~Plan, to provide services~~,~~ or to meet appropriate standards, goals, and other requirements, including performance objectives, the Department ~~*shall*~~ must inform the entity of the deficiency to be corrected and may take one (1) or more of the following steps. ~~*(3-30-01)*~~(4-1-09)T

a. Require the entity to correct the deficiency. (3-30-01)

b. Offer training and technical assistance, if appropriate, to help correct the deficiency, and submit a report to HHS describing the training and technical assistance offered, or stating the reasons why it was not offered. ~~*(3-30-01)*~~(4-1-09)T

c. If feasible, allow the entity sixty (60) days to develop and implement a quality improvement plan to correct the deficiency within a reasonable period of time. (3-30-01)

d. After providing adequate notice and an opportunity for a hearing, initiate proceedings to terminate the designation of or reduce the funding of the eligible entity unless the entity corrects the deficiency. (3-30-01)

02. Review. The Secretary of HHS may review any decision to terminate the designation or reduce the

funding of an eligible entity. (3-30-01)

601. -- 699. (RESERVED).

700. COMMUNITY FOOD AND NUTRITION PROGRAM.
Funds may be used to coordinate private and public food assistance resources, where such coordination is inadequate, to better serve low-income populations~~;~~, to assist low-income communities to identify potential sponsors of child nutrition programs and ~~*to*~~ initiate such programs in underserved or unserved areas~~;~~, and to develop innovative approaches to meet the nutrition needs of low-income individuals. ~~*(3-30-01)*~~(4-1-09)T

701. -- 99~~*6*~~9. (RESERVED).

~~***997. CONFIDENTIALITY OF RECORDS.***~~
~~*Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."* *(3-30-01)*~~

~~***998. -- 999. (RESERVED).***~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-0901 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of these temporary rules are October 1, 2008, January 1, 2009, and July 1, 2009.

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 Sections 56-1004A, 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 15, 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 has added certain individuals and providers who are required to have a criminal history and background checks under other Department rule chapters. This chapter of rules is being updated to add those individuals and providers to the list of those who are required to have checks, including references to the programs' rule chapters. The programs or individuals being added are: Alcohol or Substance Use Disorders Treatment Facilities and Programs for Adults, Designated Examiners and Designated Dispositioners, Idaho Child Care Program, and Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.

These rules are also being updated for references and amended to add additional disqualifying crimes to better protect vulnerable adults and children.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of these rules are appropriate for the following reasons: These rules are necessary to protect the public health, safety, or welfare and to comply with governing law.

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:

The fee amount for providing criminal history and background checks is based on costs incurred to complete these checks. These temporary fee rules add individuals and providers that are required to have these checks and pay for the cost at $55 per check.

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 that the costs of these added checks will not impact the state general funds. The estimated 300 additional criminal history and background checks will impact the dedicated funds by a total of $16,500. The remaining additional checks will increase federal fund expenditures through the Community Mental Health Block Grant by $6,545.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to protect the public health, safety, or welfare, and to comply with governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Bellomy (208) 334-0609.

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 22, 2009.

DATED this 29th day of May, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET 16-0506-0901

100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.
Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or program rules to complete a criminal history and background check. (3-26-08)

01. Adoptive Parent Applicants. All persons applying to the Department or petitioning the court to be an adoptive parent and all adults in the home, except stepparents applying for adoption of a stepchild, as described in IDAPA 16.06.01, "Rules Governing Family and Children's Services," and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~*(3-26-08)*~~(7-1-09)T

02. Alcohol or ~~*Drug Abuse Prevention and*~~ Substance Use Disorders Treatment Facilities and Programs ~~*Serving Children*~~. Staff, contractors, volunteers, student interns, and others assigned to programs who have direct contact with ~~*adolescents in any alcohol/drug abuse treatment program which provides treatment for persons under the age of eighteen (18)*~~ children and vulnerable adults, as defined in Section 39-5302, Idaho Code, and as required by IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs," ~~*Section 020*~~ or IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs." ~~*(3-26-08)*~~(7-1-09)T

03. Certified Family Homes. Certified family home providers, all adults in the home, and substitute caregivers, as required in Section 39-3520, Idaho Code, and IDAPA 16.03.19, "Rules Governing Certified Family Homes," ~~*Sections 009, 101 and 300,*~~ and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

04. Children's Residential Care Facilities. Owners, operators, and employees of all children's residential care facilities, as required in Section 39-1210, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~*(3-26-08)*~~(7-1-09)T

05. Children's Therapeutic Outdoor Programs. Staff, volunteers, and interns working in Children's Therapeutic Outdoor Programs, as defined in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~*Section 810.*~~ ~~*(3-26-08)*~~(7-1-09)T

06. Commercial Non-Emergency Transportation Providers. Staff of commercial non-emergency transportation providers who have contact with participants, as required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

07. **Designated Examiners and Designated Dispositioners**. Individuals seeking appointment as a designated examiner or designated dispositioner, or both, as required in IDAPA 16.07.39, "Appointment of Designated Examiners and Designated Dispositioners." (1-1-09)T

0~~7~~8. **Developmental Disabilities Agencies**. Employees, subcontractors, agents, and volunteers of developmental disabilities agencies, as required in IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," ~~*Section 009,*~~ and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

0~~8~~9. **Emergency Medical Services (EMS)**. Applicants for EMS certification, as required in IDAPA 16.02.03, "Rules Governing Emergency Medical Services." ~~*Section 501.*~~ ~~*(3-26-08)*~~(7-1-09)T

~~*09*~~**10.** **Home and Community-Based Services (HCBS)**. Providers, employees, and contractors for home and community-based services, as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

1~~0~~1. **Home Health Agencies**. Employees and contractors of home health agencies, as required in IDAPA 16.03.07, "Home Health Agencies." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

12. **Idaho Child Care Program (ICCP)**. ICCP applicants, providers, employees, volunteers, including those in group child care, family child care, relative child care, in-home child care, and individuals age thirteen (13) or older living in the home, who have direct contact with children, as required in IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program." (7-1-09)T

1~~1~~3. **Intermediate Care Facilities for the Mentally Retarded (ICF/MR)**. Employees and contractors of intermediate care facilities for the mentally retarded, as required in IDAPA 16.03.11, "Intermediate Care Facilities for the Mentally Retarded (ICF/MR)." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

1~~2~~4. **Licensed Foster Care**. All foster care applicants and other adult members of the household, as required in Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~*Section 404.*~~ ~~*(3-26-08)*~~(7-1-09)T

1~~3~~5. **Licensed ~~*Child*~~ Day Care**. Applicants, owners, operators, employees, volunteers, and those over twelve (12) years of age who have unsupervised direct contact with the children of day care centers, group day care facilities and family day care homes, as required in Section 39-1105, Idaho Code, and IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ~~*Section 300.*~~ ~~*(3-26-08)*~~(7-1-09)T

1~~4~~6. **Mental Health Clinics**. Mental health clinic's direct care staff, as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," ~~*Section 009*~~ and IDAPA 16.03.09, "Medicaid Basic Plan Benefits." ~~*Sections 009 and 714.*~~ ~~*(3-26-08)*~~(7-1-09)T

17. **Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units**. Owners, operators, and all employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide care or services or have access to clients, as required in IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units." (10-1-08)T

1~~5~~8. **Personal Assistance Agencies**. Staff of personal assistance agencies acting as fiscal intermediaries, as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

1~~6~~9. **Personal Care Service Providers**. Providers of personal care services, as required in Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

~~*17*~~**20.** **Psychosocial Rehabilitation Providers**. Individuals providing psychosocial rehabilitation services, as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~*Sections 009 and 130.*~~ ~~*(3-26-08)*~~(7-1-09)T

~~*18*~~21. **Residential Care or Assisted Living Facilities in Idaho**. Employees and contractors of residential care or assisted living facilities, as required in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

~~*19*~~22. **Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill**. Employees and contractors of semi-independent group residential care facilities for the developmentally disabled or mentally ill, as required in IDAPA 16.03.15, "Rules and Minimum Standards for Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

2~~0~~3. **Service Coordinators and Paraprofessional Providers**. Service coordinators and paraprofessionals working for an agency, as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

2~~1~~4. **Skilled Nursing and Intermediate Care Facilities**. Employees and contractors of skilled nursing and intermediate care facilities, as required in IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

2~~2~~5. **Support Brokers and Community Support Workers**. Support brokers and community support workers, as required in IDAPA 16.03.13, "Consumer-Directed Services." ~~*Section 009.*~~ ~~*(3-26-08)*~~(7-1-09)T

101. DEPARTMENT INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.
The following Department employees and contractors are subject to criminal history and background checks. (3-26-08)

01. Employees, ~~*and*~~ Contractors, and Volunteers. Employees, ~~*and*~~ contractors, and volunteers, providing direct care services or who have access to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. ~~*(3-26-08)*~~(7-1-09)T

02. Employees of Bureau of Audits and Investigations. (3-26-08)

a. Fraud Investigators; (3-26-08)

b. Utilization Review Analysts; and (3-26-08)

c. Criminal History Staff. (3-26-08)

03. Employees at State Institutions. All employees of the following state funded institutions; (3-26-08)

a. Idaho State School and Hospital, Nampa, Idaho; (3-26-08)

b. State Hospital North, Orofino, Idaho; and (3-26-08)

c. State Hospital South, Blackfoot, Idaho. (3-26-08)

04. Emergency Medical Services (EMS) Employees. EMS communication specialists and managers. (3-26-08)

05. Other Employees. Other Department employees as determined by the Director. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes described in Subsections 210.01.a through 210.01.v. of these rules will result in an unconditional denial being issued. (3-26-08)

a. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)

b. Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)

c. Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)

d. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)

e. Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)

f. Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)

g. Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)

h. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)

i. Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)

j. Murder in any degree, voluntary manslaughter, assault, or battery with intent to commit a serious felony, as defined in Sections 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code; (3-26-08)

k. Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)

l. Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)

m. Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)

n. Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)

o. Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)

p. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)

q. Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)

r. Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)

s. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)

t. Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)

u. Any felony punishable by death or life imprisonment; or (3-26-08)

v. Attempt, conspiracy, ~~or~~ accessory after the fact, <u>or aiding and abetting,</u> as defined in Sections 18-

205, 18-306, ~~*and*~~ 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ~~*(3-26-08)*~~(7-1-09)T

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~*n*~~q. of this rule: ~~*(4-9-09)*~~(7-1-09)T

a. Aggravated assault, as defined in Section 18-905, Idaho Code; (3-26-08)

b. Aggravated battery, as defined in Section 18-907(1), Idaho Code; (3-26-08)

c. Arson in the third degree, as defined in Section 18-804, Idaho Code; (3-26-08)

d. Burglary, as defined in Section 18-1401, Idaho Code; (3-26-08)

e. Felony computer crimes, as defined in Section 18-2202, Idaho Code; (7-1-09)T

~~e~~f. A felony involving a controlled substance; (3-26-08)

g. Felony domestic violence, as defined in Section 18-918, Idaho Code; (7-1-09)T

h. Any felony lottery crime as defined in Section 67-7448, Idaho Code; (7-1-09)T

~~f~~i. Felony theft, as defined in Section 18-2403, Idaho Code; (3-26-08)

~~g~~j. Forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 ~~*and*~~ through 18-312~~*4*~~8, Idaho Code; ~~*(3-26-08)*~~(7-1-09)T

~~h~~k. Forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-26-08)

~~i~~l. Grand theft, as defined in Section 18-2407(1), Idaho Code; (3-26-08)

~~j~~m. Identity theft, as defined in Section 18-3126, Idaho Code; (4-9-09)

~~k~~n. Insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-26-08)

~~l~~o. Public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; (4-9-09)

~~m~~p. Attempted strangulation, as defined in Section 18-923, Idaho Code; or (4-9-09)

~~n~~q. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, ~~*and*~~ 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. ~~*(3-26-08)*~~(7-1-09)T

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

a. A withheld judgment; (3-26-08)

b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)

c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)

d. A sealed record. (3-26-08)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 39-1111, 39-1213, 56-1003, and 56-1005, Idaho Code.

MEETING SCHEDULE: A public meeting on this negotiated rulemaking will be held as follows:

TUESDAY - JULY 7, 2009 - 3:00 p.m.

DEPARTMENT OF HEALTH & WELFARE
Pete T. Cenarrusa Building - Rm. 7-A
450 West State Street, Boise, ID

METHOD OF PARTICIPATION: Persons wishing to participate in this formal negotiated rulemaking must do at least one of the following:

1. Attend the negotiated rulemaking and participate in the negotiation process;
2. Provide oral or written recommendations, or both, at the negotiated rulemaking; or
3. Submit written recommendations and comments to the address below.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Under Senate Bill 1112, the 2009 Legislature amended the statewide system for the protection of children in daycare facilities. These changes to Title 39, Chapter 11, Idaho Code, take effect on January 1, 2010. These amendments will necessitate corresponding changes and clarification in this chapter of rules.

The Department of Health and Welfare is entering into negotiated rulemaking to seek input from families, daycare providers, and other stakeholders regarding the development of rules to align with the changes in statute. These rules will provide requirements for areas related to daycare licensing including fees, criminal history checks, safety and health standards, and license denial or revocation.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking, contact Landis Rossi at (208) 334-5688. Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and delivered on or before July 13, 2009.

DATED this 8th day of June, 2009.

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

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-0802 (FEE RULE)

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No.16-0612-0802. This agency action for this final rulemaking is authorized pursuant to Sections 56-202, 56-203, and 56-1004A, Idaho Code.

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

Pursuant to Senate Concurrent Resolution 107, Docket No.16-0612-0802 is not consistent with legislative intent and has been amended accordingly. In accordance with the concurrent resolution the following changes have been made to the final rule:

> In Section 009, Criminal History and Background Check Requirements, Subsection 03, Individual in the Home, was deleted and subsequent subsections were renumbered.

The original text of the proposed rule was published in the October 1, 2008, Idaho Administrative Bulletin, Vol. 08-10, Book 2, pages 75 through 77. The pending rule was published in the January 7, 2009, Idaho Administrative Bulletin, Vol. 09-1, page 339.

In the Notice of Rulemaking - Pending Rule the agency specified that the rule would become final and effective on July 1, 2009, as provided for in statute. However, the rulemaking was affected by a concurrent resolution and the final effective date defaulted to the adoption date of the concurrent resolution as required by law. Because the specified effective date was not inserted into the language of SCR 107, the final effective date of the rule is the adoption date of SCR 107, April 9, 2009. Because the intention was to have the final rule effective on July1, 2009, the Department will begin enforcing Section 009, Criminal History and Background Check Requirements, starting July 1, 2009.

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 associated with this rulemaking. The cost of the criminal history and background check is the responsibility of the applicant or provider.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Genie Sue Weppner at (208) 334-5656.

DATED this 9th day of June, 2009.

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

THE FOLLOWING IS THE FINAL TEXT OF THE SECTION AFFECTED BY SCR 107

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for ICCP providers. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

02. ICCP Provider is Approved. The ICCP provider must have completed a criminal history and background check, and received a clearance, prior to becoming an ICCP provider. (4-9-09)

03. Availability to Work or Provide Service. (4-9-09)

a. The employer or provider, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. (4-9-09)

b. Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (4-9-09)

c. Individuals living in the home who have direct contact with children are allowed contact after the criminal history application and self-disclosure is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a disqualifying crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

04. Applicants, Providers, and Other Individuals Subject to Criminal History Check Requirements. The following applicants, providers and other individuals listed below must receive a criminal history and background check: (4-9-09)

a. Child care center employees and volunteers who have direct contact with children; (4-9-09)

b. Group child care employees and volunteers who have direct contact with children; (4-9-09)

c. Family child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; (4-9-09)

d. Relative child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; and (4-9-09)

e. In-home child care provider. (4-9-09)

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 providing child care to an ICCP eligible child. (4-9-09)

06. Additional Criminal Convictions. Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the child care provider to the Department when the provider learns of the conviction. (4-9-09)

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.44 - SCHEDULE OF FEES, LICENSES AND MISCELLANEOUS CHARGES

DOCKET NO. 18-0144-0901 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 41-211, 41-401, 41-1952 and 41-1965, 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 15, 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:

House Bill 75, effective July 1, 2009, requires that persons engaged in the business of life settlements register with the Department of Insurance and pay fees as prescribed by the Director. This rulemaking sets forth required fees for persons registering as life settlement providers and life settlement brokers.

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:

The rule is necessary to protect the public health, safety, or welfare, and to comply with deadlines in amendments to governing law.

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:

Life settlement providers will be required to pay an initial registration fee of $500, and $300 biennially thereafter. Life settlement brokers will be required to pay an initial registration fee of $300, and $80 biennially thereafter. The fee is authorized by Sections 41-1952 and 41-1965, Idaho Code, effective July 1, 2009.

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:

No negative fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the changes made by this rulemaking were needed to conform the existing rule to changes in state law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest at 208-334-4250.

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 22, 2009.

DATED this 27th day of May, 2009.

Shad Priest, Deputy Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 18-0144-0901

030. PRODUCER AND MISCELLANEOUS LICENSING FEES.

01. Original License Application. The following fees are due and must be paid with the filing application for original license, which fees include the issuance of a license, if issued: (3-13-02)

a. Administrators -- three hundred dollars ($300). (7-1-00)

b. Producers -- eighty dollars ($80). (3-13-02)

c. Designation as a managing general agent -- eighty dollars ($80). (3-13-02)

d. Adjusters -- eighty dollars ($80). (3-13-02)

e. Reinsurance intermediary -- eighty dollars ($80). (3-13-02)

f. Surplus line brokers -- eighty dollars ($80). (3-13-02)

g. Life settlement providers -- five hundred dollars ($500). (7-1-09)T

h. Life settlement brokers -- three hundred dollars ($300). (7-1-09)T

02. Examination Fees. The following fees are due and must be paid in order to take examinations for the following licenses: (3-13-02)

a. Producers and adjusters -- application for examination and each time taken -- sixty dollars ($60). (3-13-02)

03. Fingerprint Processing. Processing fingerprints (when required) -- sixty dollars ($60). (7-1-00)

04. License Renewal. The following fees are due and must be paid for each license in order to renew or continue each and every license: (3-13-02)

a. Adjusters, producers (biennial) -- eighty dollars ($80), or sixty dollars ($60) if renewed electronically. (3-16-04)

b. Redesignation as managing general agent (annual) -- eighty dollars ($80). (3-13-02)

c. Administrators (biennial) -- eighty dollars ($80). (3-19-07)

i. Renewal form shall be filed on or before December 31. (3-19-07)

ii. Any renewal form postmarked after December 31 shall include a penalty in an amount equal to the renewal fee. (3-19-07)

iii. A renewal form postmarked after January 31 must be submitted as a new application with supporting documents and the full application fee. (3-19-07)

d. Surplus line brokers (biennial) -- eighty dollars ($80), or sixty dollars ($60) if renewed electronically. (3-16-04)

e. Life settlement providers (biennial) -- three hundred dollars ($300). (7-1-09)T

f. Life settlement brokers (biennial) -- eighty dollars ($80). (7-1-09)T

IDAPA 20 - DEPARTMENT OF LANDS

20.03.04 - RULES GOVERNING THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners" (Board), Sections 811 through 815, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating regular rulemaking procedures. This negotiated rulemaking is authorized pursuant to Idaho Code Section 58-104(6).

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The Idaho Department of Lands (IDL) is initiating this rulemaking to clarify and correct some of the rule changes approved in 2008. IDL is also proposing to remove the actual fee amounts from the rules and allow the Board to set the fees subject to the maximum fee amounts in Section 47-13, Idaho Code. This will allow the Board to more effectively assign fees based on the cost of application processing. This rulemaking will be conducted in conjunction with the Docket No. 20-0317-0901, "Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands" rulemaking.

Upon conclusion of negotiations, IDL intends to present a rule to the Board for approval to proceed with proposed rulemaking in August 2009. If approved by the Board, IDL will initiate regular rulemaking procedures by publishing the proposed rule in the October 2009 issue of the Idaho Administrative Bulletin. In order to meet this rulemaking schedule, IDL intends to conclude negotiations by July 24, 2009.

PRELIMINARY DRAFT: The preliminary draft rule can be obtained at http://www.idl.idaho.gov/adminrule/rulemaking.html or by contacting the undersigned.

MEETING SCHEDULE: Public meetings for the negotiated rulemaking are scheduled through late July. Please visit the above website for up to date meeting information.

Those interested in participating in the negotiated rulemaking process are encouraged to attend the scheduled meetings. Written comments may also be sent to the address below.

ASSISTANCE ON TECHNICAL QUESTIONS, AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact the undersigned.

Anyone may submit written comments during this negotiated rulemaking by mail, fax or e-mail at the address below. Written comments on the draft rules must be received by July 24, 2009.

For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

DATED this 22nd day of May, 2009

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
PO Box 83720, Boise, Idaho 83720-0050
(208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

IDAPA 20 - DEPARTMENT OF LANDS

20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS

DOCKET NO. 20-0317-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners" (Board), Sections 811 through 815, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating regular rulemaking procedures. This negotiated rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The Idaho Department of Lands (IDL) is initiating this rulemaking to provide continuity with IDAPA 20.03.04 and to clarify and correct some of the rule changes approved in 2008. IDL is also proposing to remove the actual fee amounts from the rules and allow the Board to set the fees subject to the maximum fee amounts in Section 47-13, Idaho Code. This will allow the Board to more effectively assign fees based on the cost of application processing. This rulemaking will be conducted in conjunction with the Docket No. 20-0304-0901, "Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho" rulemaking.

Upon conclusion of negotiations, IDL intends to present a rule to the Board for approval to proceed with proposed rulemaking in August 2009. If approved by the Board, IDL will initiate regular rulemaking procedures by publishing the proposed rule in the October 2009 issue of the Idaho Administrative Bulletin. In order to meet this rulemaking schedule, IDL intends to conclude negotiations by July 24, 2009.

PRELIMINARY DRAFT: The preliminary draft rule can be obtained at http://www.idl.idaho.gov/adminrule/rulemaking.html or by contacting the undersigned.

MEETING SCHEDULE: Public meetings for the negotiated rulemaking are scheduled through late July. Please visit the above website for up to date meeting information.

Those interested in participating in the negotiated rulemaking process are encouraged to attend the scheduled meetings. Written comments may also be sent to the address below.

ASSISTANCE ON TECHNICAL QUESTIONS, AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact the undersigned.

Anyone may submit written comments during this negotiated rulemaking by mail, fax or e-mail at the address below. Written comments on the draft rules must be received by July 24, 2009.

For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

DATED this 22nd day of May, 2009.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
PO Box 83720, Boise, Idaho 83720
(208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.04 - RULES GOVERNING THE IDAHO STATE VETERANS CEMETERY

DOCKET NO. 21-0104-0901

NOTICE OF RULEMAKING
PROPOSED RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is November 18, 2008.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has amended a temporary rule and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-202 and 65-204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 15, 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 amending a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Code of Federal Regulations, 38 C.F.R. Section 39.5(d), mandates that states receiving a grant for a veterans cemetery must deny interment to individuals convicted of certain capital crimes or who have avoided conviction due to flight. The rule change is necessary to enforce the requirements of 38 C.F.R. Section 39.5(d) on applicants for interment in the veterans cemetery.

AMENDED TEMPORARY RULE: The temporary rule is being amended to correct an erroneous citation to a federal regulation. The correction is 38 CFR 38.620. The temporary rule published in the January 7, 2009 Administrative Bulletin, Vol. 09-1, pages 411 through 412.

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 of the need for temporary rulemaking and the need to be in compliance with amendments to governing federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the amendment to temporary and proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

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 22, 2009.

DATED this 28th day of May, 2009.

David E. Brasuell, Administrator
Division of Veterans Services

320 Collins Road, Boise, ID 83702
Phone: (208) 334-351 / Fax (208) 334-2627

THE FOLLOWING IS THE PROPOSED & AMENDED TEMPORARY TEXT OF DOCKET NO. 21-0104-0901

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 21.01.04 incorporates by reference the following: (5-3-03)

a. The full text of 38 CFR ~~1~~38.620, dated July 1, 2001. ~~(5-3-03)~~(11-14-08)T

b. 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-30-06)

c. 38 CFR 39.5(d), dated July 1, 2008. (11-14-08)T

02. Document Availability. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Administrator. The Administrator of the Idaho Division of Veterans Services or his designee. (5-3-03)

02. Applicant. The individual requesting interment, disinterment or reinterment of a qualified person. (5-3-03)

03. Armed Forces Member. A member or former member of the armed forces of the United States, the reserve component of the armed forces of the United States, the reserve officers training corps of the United States, or the armed forces of an ally of the United States who is eligible for burial in national cemeteries pursuant to 38 CFR ~~1~~38.620 and 38 U.S.C. Section 2402. ~~(5-3-03)~~(11-14-08)T

04. Cemetery. The Idaho State Veterans Cemetery authorized pursuant to Section 65-108, Idaho Code. (5-3-03)

05. Committal Service. A gathering of one (1) or more individuals prior to interment or reinterment. (5-3-03)

06. Cremains. Cremated human remains. (5-3-03)

07. Designated Interpretive Trail. A public recreational trail designated by a sign or marker. (3-30-07)

08. Disinterment. The removal of human remains from their place of interment. (5-3-03)

09. Division. The Idaho Division of Veterans Services. (5-3-03)

10. Interment. The disposition of human remains by burial or the placement of cremains in a grave plot or in any location designated by the Administrator for use as a permanent location of cremains. (5-3-03)

11. Qualified Person. A person who satisfies the requirements for eligibility for interment in national cemeteries found at 38 CFR ~~1~~38.620 and 38 U.S.C. Section 2402 and is not prohibited from being interred by 38 CFR 39.5(d). ~~(5-3-03)~~(11-14-08)T

12. Reinterment. The interment of previously interred human remains. (5-3-03)

13. Unremarried Spouse. An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (5-3-03)

14. USDVA. The United States Department of Veterans Affairs. (5-3-03)

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 54-1404 and 54-1418, 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 15, 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:

By statute, Idaho is a party state to the Nurse Licensure Compact. Party states, through their compact administrators, are charged with promulgating uniform rules to facilitate and coordinate implementation of the compact. These temporary and proposed rules are being promulgated as uniform rules pursuant to this process. The temporary and proposed rules revise an existing definition, provide additional methods of proving an applicant's primary state of residency, and clarify circumstances and procedures for issuance of a "single state" license where appropriate.

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

The temporary rulemaking is necessary to comply with deadlines in amendments to governing law.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking, as well as the fact that this is uniform rulemaking in compliance with controlling law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sandra Evans, MAEd., R.N., Executive Director, (208) 334-3110 ext. 26.

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 22, 2009.

DATED this 26th day of May, 2009.

Sandra Evans, MAEd., R.N.,
Executive Director
Idaho Board of Nursing

280 N. 8th St., Ste. 210
PO Box 83720, Boise, ID 83720-0061
Phone: (208) 334-3110 ext. 26/ Fax: (208) 334-3262

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 23-0101-0901

077. MULTISTATE LICENSURE.

01. Definitions. In Section 077, the following terms have the meanings indicated. (3-15-02)

a. Board means the regulatory body responsible for issuing nurse licenses. (3-15-02)

b. Compact means the Nurse Multistate Licensing Compact. (3-15-02)

c. Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)

d. Home state means the party state that is the nurse's primary state of residence. (3-15-02)

e. Party state means a state that is a signatory on the compact. (3-15-02)

f. Primary state of residence means the state of a~~*n individual's*~~ person's declared~~,~~ fixed~~*, and*~~ permanent ~~*residence*~~ and principal home for legal purposes; domicile. ~~*(3-15-02)*~~(7-1-09)T

g. Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)

02. Examination. No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination) examination: (4-6-05)

a. NCLEX-RN for professional nursing; or (4-6-05)

b. NCLEX-PN for practical nursing. (4-6-05)

03. Issuance of License in Compact Party State. (3-15-02)

a. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)

i. Driver's license with a home address; (3-15-02)

ii. Voter registration card displaying a home address; ~~*or*~~ ~~*(3-15-02)*~~(7-1-09)T

iii. Federal income tax return declaring the primary state of residence~~.~~; ~~*(3-15-02)*~~(7-1-09)T

iv. Military Form No. 2058 - state of legal residence certificate; or (7-1-09)T

v. W2 from U.S. Government or any bureau, division, or agency thereof, indicating the declared state of residence. (7-1-09)T

b. A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state. (7-1-09)T

c. A license issued by a party state is valid for practice in all other party states unless clearly

designated as valid only in the state which issued the license. (7-1-09)T

d. When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. (7-1-09)T

~~**b.**~~**c.** A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days. (3-15-02)

~~**c.**~~**f.** The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the thirty (30) day period in Paragraph 077.03.b. of these rules shall be stayed until resolution of the pending investigation. (3-30-07)

~~**d.**~~**g.** The former home state license is not valid upon the issuance of a new home state license. (3-15-02)

~~**e.**~~**h.** If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)

04. Multistate Licensure Privilege Limitations. (3-15-02)

a. Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendency of the disciplinary order or agreement. (3-15-02)

b. The requirement referred to in Paragraph 077.04.a. of these rules may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. (3-30-07)

c. An individual who had a license that was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued. (7-1-09)T

05. Information System. (3-15-02)

a. Levels of Access. (3-15-02)

i. Public access to nurse licensure information shall be limited to: (3-15-02)

(1) The licensee's name; (3-15-02)

(2) Jurisdictions of licensure; (3-15-02)

(3) Licensure expiration date; (3-15-02)

(4) Licensure classification and status; (3-15-02)

(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)

(6) The status of multistate licensure privileges. (3-15-02)

ii. Non-party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)

iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (3-15-02)

b. Right to Review. (3-15-02)

i. The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (3-15-02)

ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)

iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (3-15-02)

c. Changes in Disciplinary Data. (3-15-02)

i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)

(1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (3-15-02)

(2) Dismissal of the complaint; and (3-15-02)

(3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)

ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)

(1) A disciplinary action; (3-15-02)

(2) An agreement or order requiring participation in alternative programs; (3-15-02)

(3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)

(4) Dismissal of a complaint. (3-15-02)

iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)

OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR

IDAPA 22 - BOARD OF MEDICINE

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

DOCKET NO. 24-0600-0901

NOTICE OF LEGISLATIVE ACTION RELATING TO THE BOARD OF MEDICINE AND THE BUREAU OF OCCUPATIONAL LICENSES - HOUSE BILL 261

EFFECTIVE DATE: The effective date of this action is July 1, 2009.

AUTHORITY: In compliance with Sections 67-5203, Idaho Code, notice is hereby given by the Office of the Administrative Rules Coordinator that the Sixtieth Legislature in the First Regular Session - 2009, passed House Bill 261, affecting the Occupational Therapy Practice Act, and that said bill was signed into law by Governor C.L. "Butch" Otter, Session Law Chapter 222, thereby amending existing law to transfer functions of the Board of Medicine relating to the Occupational Therapist Licensure Board to the Bureau of Occupational Licenses.

DESCRIPTIVE SUMMARY: The following is a statement of the substance of the legislative action:

House Bill 261 amends Chapter 37, Title 54, Idaho Code, the Occupational Therapy Practice Act. The amendments update and include terms and language to align Idaho's licensure requirements with the national model practice act, moves testing and licensing responsibility and other regulatory functions from the Board of Medicine under IDAPA 22 to the Bureau of Occupational Licenses under IDAPA 24. HB 261 also establishes and defines occupational therapy aide, delineates the practice of occupational therapy, establishes continuing education requirements, creates a temporary license subject to acceptance of qualifications and licensure issuance by the Board, establishes new licensure dates, and adds a disciplinary action section.

Notwithstanding the provisions of Title 67, Chapter 52, Idaho Code, and further complying with the legislative intent of House Bill 261, non-substantive changes will be made to update the IDAPA, Title and chapter numbers and change all references, citations, and contact information within the rules. Changes include, but are not limited to, the following:

All citations and references to IDAPA 22 relating to the affected chapter under IDAPA 22, Title 09, Chapter 01, are being changed to IDAPA 24, Title 06, Chapter 01. The new chapter designation is as follows:

IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants."

Citations and references to the Board of Medicine under IDAPA 22 relating to the affected chapter formerly under Title 09, Chapter 01, as referenced above, now refer to the Bureau of Occupational Licenses, IDAPA 24, and specifically to the rules of the Occupational Therapy Licensure Board under IDAPA 24, Title 06, Chapter 01.

Pursuant to Section 67-5204, Idaho Code, these changes will be codified into the electronic edition of the 2009 Idaho Administrative Code and made available on line. These changes were not incorporated into the print edition of the 2009 Administrative Code.

ASSISTANCE ON QUESTIONS: For assistance on questions concerning this notice, contact Dennis Stevenson, Administrative Rules Coordinator, (208) 322-1820.

DATED this 17th day of June, 2009.

Dennis Stevenson
Administrative Rules Coordinator
Office of the Administrative Rules Coordinator
Department of Administration
PO Box 83720, Boise, ID 83720-0306
Phone: (208) 332-1820 / Fax: (208) 332-1896

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 67-4249, 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 15, 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:

This amended rule clarifies that no person may endanger the life of any person or creature on Department administered lands and that no person may indiscriminately discharge a firearm on state park property, except when such use is for legal hunting as authorized by Board rule, or for exhibition or at designated ranges as authorized by the Director.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: it is reasonably necessary to protect the public health, safety, or welfare.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the brief period of time available prior to the July 1, 2009 effective date.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dean Sangrey at 208-514-2260.

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 22, 2009.

DATED this 29th day of May, 2009.

Dean Sangrey
Operations Division Administrator
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
PO Box 83720
Boise, ID 83720-0065
208-514-2260/FAX 208-334-3741

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 26-0120-0901

600. PERSONAL SAFETY, FIREARMS.
No person may ~~*discharge firearms or any other projectile firing device, or otherwise*~~ purposefully or negligently endanger the life of any person or creature within any land administered by the Department. ~~*All firearms brought onto*~~ No person may discharge firearms or other projectile firing devices within any lands administered by the Department ~~*shall be unloaded at all times and either out of sight, or in a vehicle*~~, except ~~*when used for legal*~~ in the lawful defense of person, persons, or property or in the course of lawful hunting ~~*as authorized in Section 575 in this chapter*~~, or for exhibition or at designated ranges as authorized by the Director. ~~*(3-7-03)*~~(7-1-09)T

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.01 - IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (ICDBG)

DOCKET NO. 28-0201-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 67-4702, 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 15, 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 rule change is necessary to take advantage of available federal funding sources. The proposed changes will increase flexibility in providing access to federal funding for city and county projects.

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

The temporary rulemaking will confer a benefit on affected city and county entities.

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 state funding sources will be impacted.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Porter, Community Development Manager, (208) 334-2650 ext. 2145.

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 22, 2009.

DATED this 19th day of May, 2009.

Donald Dietrich, Director
Department of Commerce
700 W. State St.
P. O. Box 83720
Boise, ID 83720-0093
Phone: (208) 334-2470
Fax: (208) 334-2631

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 28-0201-0901

000. LEGAL AUTHORITY.
In 1981 Congress amended the Community Development Act of 1974 to allow states to assume the Department of Housing and Urban Development's Small Cities Community Development Block Grant Program. The Department of Commerce, through these rules, is implementing the state's administration of the Small Cities Community Development Block Grant program as authorized by the Housing and Community Development Act of 1974, as amended, (42 USC, Sec. 5301) and Department of Housing and Urban Development Rules 24 CFR, Part 570, Subpart I. Funds which are appropriated annually by Congress are allocated by statutory formula to each state. This chapter is adopted in accordance with Section 67-4702(2), Idaho Code. ~~*(7-6-94)*~~(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS.
The Department may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. These documents are available for public inspection at the Department's office. (7-1-09)T

003. ADMINISTRATIVE APPEALS.
IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Section 100, et seq., shall apply. (7-1-09)T

004. INCORPORATION BY REFERENCE.
IDAPA 28.02.01 incorporates by reference the following: (7-1-09)T

01. 24 CFR 570.489, pages 41 and 43, dated April 1, 2004. Access to this document is available through the Department of Commerce website at this address: http://commerce.idaho.gov/. (7-1-09)T

02. 24 CFR 570.611, page 46, dated April 1, 2004. Access to this document is available through the Department of Commerce website at this address: http://commerce.idaho.gov/. (7-1-09)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The street address of the office of the Idaho Department of Commerce is 700 W. State Street, Boise, Idaho 83720. The mailing address of the Department is P. O. Box 83720, Boise, Idaho 83720-0093. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The telephone number of the Department is (208) 334-2470. The Department's facsimile number is (208) 334-2631. (7-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.
Department records are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-09)T

00~~3~~7. -- 00~~9~~8. (RESERVED).

00~~2~~9. DEFINITIONS.
For the purposes of these rules, the following words are defined. (7-6-94)

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

02. Appropriation. The Federal funding, as set by Congress, for the Department of Housing and

Urban Development (HUD). (7-6-94)

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

04. **Department**. The Idaho Department of Commerce. (7-1-09)T

0~~4~~5. **Grant**. The transfer of ICDBG funds, in accordance with state and federal law, from the Department to a unit of local government for the specific purpose of accomplishing the project described in the Application. (7-6-94)

0~~5~~6. **ICDBG**. The Idaho Community Development Block Grants. The Idaho Department of Commerce administered Small Cities ICDBG Program. (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

016. BENEFIT TO LOW AND MODERATE INCOME PERSONS.

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

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

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

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

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

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

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

e. A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or persons with disabilities to publicly owned and privately owned

non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one dwelling unit. (7-6-94)

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

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

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

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

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

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

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

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

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

c. For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least fifty-one percent (51%) of the jobs at the time the ICDBG assistance is provided: The job is known

to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two (2) years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover. (7-6-94)

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

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

f. In any case where ICDBG funds are used for public improvement (e.g., water, sewer and road) and the national objective is to be met by job creation or retention as a result of the public improvement, the requirement shall be met as follows: the assistance must be reasonable in relation to the number of jobs expected to be created or retained by the affected business(es) within two (2) years from the completion of the public improvement. If the ICDBG assistance is under ten thousand dollars ($10,000) per job created or retained, then only businesses applying for ICDBG assistance need to be assessed for low and moderate income job creation or retention. If the ICDBG equals or exceeds ten thousand dollars ($10,000) per job then any business benefiting by the public improvement, for a period of up to one (1) year after the physical completion of the public improvement, must be assessed for low and moderate income job creation or retention. ~~*(3-19-99)*~~(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

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

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

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

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

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

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

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

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

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

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

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

a. Direct new or retained jobs, in fulltime equivalents (FTE's), created within two (2) years of grant construction completion. Net new jobs are those created as a result of the ICDBG, over and above employment at the business site prior to the grant, and which do not include relocated jobs from the assisted business in the same labor market area. Retained jobs are those that would be lost without the ICDBG assistance. A job creation cost of more than ~~*ten*~~ thirty thousand dollars ($~~*1*~~30,000) ICDBG per job will not be considered. If jobs are not being created or retained, a project cannot be funded. ~~*(4-11-06)*~~(7-1-09)T

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

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

d. Business Risk and Management (zero (0) to one hundred twenty-five (125) points). The probability of achieving the projected jobs and payroll within one (1) and two (2) years, as determined by the Department. The determination may be made on the basis of: the business plan and schedule, the financial position and a credit analysis of the business; the performance record of senior management of the business project; and other criteria

reasonably required by the Department. Projects receiving less than seventy-five (75) points in this category will be eliminated from further consideration. (4-11-06)

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

i. Planning (fifty (50) points). Describe planning efforts to identify and detail all steps related to the implementation of the entire project. Identify all participants in the process. Describe all the partnerships and relationships involved in implementing the project. This will include local government actions, the business actions, other agency and utility actions, real estate, environmental, legal, financial and grant considerations. (4-11-06)

ii. Schedule (fifty (50) points). A detailed and reliable schedule of all actions identified in the plan. Also a separate grant funded project construction schedule is required of all Applications. (4-11-06)

iii. Cost (fifty (50) points). Detailed cost estimates of all actions, permits, construction, real estate, etc. should be prepared by an engineer or architect. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

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

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

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

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

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

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

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

l. Grant Management (twenty-five (25) points). If the grant funded activities are managed by the grantee, twenty-five (25) points will be awarded. Grantee management includes management under contract with a Department approved Grant Manager. (4-11-06)

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

(BREAK IN CONTINUITY OF SECTIONS)

152. GRANT AWARD.

01. Funding Allocations. Each year the Department will receive an allocation from the Department of Housing and Urban Development. This allocation is derived from the formula contained in 42 USC, Sec. 5301, the Housing and Community Development Act of 1974, as amended. The allocation shall be generally divided in the following manner to establish target amounts for decision making by the Economic Advisory Council (EAC): first, ~~*one hundred thousand dollars ($100,000) plus two percent (2%) of the total*~~ the amount specified in 24 CFR 570.489 (see Subsection 004.01) shall be reserved for the Department's administrative costs; second, one percent (1%) of the total shall be reserved for Technical Assistance; third, five percent (5%) or three hundred thousand dollars ($300,000), whichever is less, of the total allocation shall be set aside for Imminent Threat (IT) grants; fourth, six percent (6%) or six hundred thousand dollars ($600,000) whichever is less, of the total allocation, shall be set aside for Community Center (CC) or Senior Citizen Center (SR) grants; fifth, any program income, recaptured funds, or carryover funds from the previous fiscal years shall be added to the remainder; and finally, of the remainder, fifty percent (50%) shall be reserved for Public Facilities or Housing (PFH) grants and fifty percent (50%) for Economic Development (ED) grants. These targeted amounts may be more or less than the actual amount funded in each category depending on the needs and requests identified in the applications submitted and may shift according to Subsection 152.02. ~~*(3-30-07)*~~(7-1-09)T

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

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

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

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

b. After a grant contract has been executed, the Department shall periodically evaluate the progress of

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

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

05. Excessive Funds. In the event a project can be completed for less than the grant amount, the difference between actual project costs and the grant amount shall be reserved by the Department for standby projects, or added to the total of the next fiscal year allocation for distribution. The Department shall amend the grant contract to reflect the reduced costs. In extraordinary circumstances the excess funds may be used for an eligible activity which further enhances the project as described in the Application. Before the Department decides to allow the additional activity, the grantee must demonstrate the activity will provide an equal or greater benefit than the original project; it will increase the benefits to low and moderate income persons, it will be completed within the original time frame, and the additional activity will be completed with the excess funds. The grantee must also show completion of the original project, its objectives and benefits. (7-6-94)

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

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

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

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

08. Audit Requirements. All ICDBG projects shall be audited annually or biannually in accordance with Sections 50-1010 and 31-1701, Idaho Code, the Single Audit Act of 1984, the implementing regulations in OMB Circular A-133, and all applicable federal audit standards, and other applicable state laws. Audits shall include any management letters associated with the audit. The audit shall be submitted to the Legislative Auditors Office within thirty (30) days of completion. Grantees shall require sub-grantees to provide audits conducted according to applicable federal and state laws, regulations and standards. The grantee shall have these audits reviewed as part of the grantee's audit. This review shall be commented and noted in the audit report. This review shall opine that sub-grantees are in compliance with the applicable program laws, regulations, contracts, and standards. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

171. PROGRAM INCOME.
Program income will be administered in accordance with 24 CFR 570.489 (see Subsection 004.01). (7-1-09)T

~~***01. Definition**. Program income is monies earned by a grantee or its sub-grantee that were generated from the use of ICDBG funds. Program income includes, but is not limited to, the following: payments of principal and interest on loans made using ICDBG funds; proceeds from the sale of loans made with ICDBG funds; interest earned on ICDBG funds held in a revolving fund account; proceeds from the lease or disposition of real property acquired with ICDBG funds; gross income from the use or rental of property acquired, constructed or improved with ICDBG funds less the costs incidental to the generation of the income; interest earned on any program income pending disposition of such income; proceeds from the disposition of equipment purchased with ICDBG funds; proceeds from sale of loans secured by ICDBG funds; funds collected through "special assessments" made against properties owned and occupied by non-LMI households, where the "special assessment" is used to recover all or part of the ICDBG funds used to improve a public facility; and gross income for an equity position or interest in a for-profit entity which was acquired with ICDBG funds. (7-6-94)~~

~~***02. Requirements on Usage**. A grantee or sub-grantee may retain the program income only as long as it is used for the purpose and jurisdiction for which the funds were originally granted. Any other use of program income shall require the grantee to repay the program income to the Department. Other governing requirements of program income depend on when the income is received and the status of the grant. See Section 173. (Carry Forward of Program Income to Subsequent Grants), Section 176. (Program Income on Hand at Closeout), and Section 181. (Program Income Remaining in Closed Out Projects) for more applicable requirements. (7-6-94)~~

~~***03. Responsibility of Grantee or Sub-Grantee**. Program income that is retained by the grantee or its sub-grantees and earned before or after grant closeout remains the revenue and responsibility of the local government grantee. These conditions shall be contained in the sub-grant contract between the local government grantee and the sub-grantee. (7-6-94)~~

~~***04. Exception to Requirements**. Receipts derived from the operation of a public work or facility which received an ICDBG grant for its construction do not constitute program income. Examples of receipts include admission fees paid by persons using recreational facilities constructed with grant funds and service fees paid by households using a water facility constructed with grant funds. (7-6-94)~~

~~***05. Minor Amounts Exemption**. If the total amount of program income earned in one (1) program year (state fiscal year) is less than twenty five thousand dollars ($25,000); the amount is not considered program income and is exempt from these rules. The total amount is the total earned by the grantee and its subrecipients from all open ICDBG grants. (3-20-97)~~

~~***172. USE OF PROGRAM INCOME BEFORE DRAWDOWN OF ADDITIONAL GRANT FUNDS.***~~
~~*Before making additional drawdowns from the Department to finance approved community development activities, program income shall be disbursed as follows: (7-6-94)*~~

~~***01. Repayments**. Program income in the form of repayments to a revolving loan fund (RLF) established to carry out an approved economic development activity, shall be substantially or completely disbursed from the RLF fund before additional drawdowns are made from the Department for the RLF. For example, a county receives a grant to establish an RLF through a Local Development Corporation (LDC) for the purpose of making several business loans, the first loan is made and the business begins repaying the loan before the second loan is made; the program income on hand must be used as part of the second loan, and only the balance of funds needed for the second loan can be requested from the Department. (7-6-94)~~

~~***02. Other Program Income**. All other program income shall be substantially or completely disbursed for any approved activity before additional drawdowns are made from the Department. (7-6-94)~~

~~***03. Uses of a RLF to Distribute Program Income**. A RLF is a separate fund established through an LDC (with a set of accounts that are independent of other program accounts) established to carry out a business loan program which, in turn, generates repayments to the fund to make additional loans. The grantee may establish a RLF program to provide a mechanism to hold program income for redistribution for additional business loans. Normally the grantee must disburse program income on hand for any immediate cash need. Revolving loan funds allow the~~

~~*grantee to hold program income for distribution to business loans and continue to drawdown ICDBG grant funds for other budgeted activities. The grantee must define what activities the fund has been set up to serve in the re-use plan and grant Application. Program income in the RLF, including amounts which cover only a portion of the drawdown need, must be used to meet cash needs for business loans to be funded by the RLF. When a grantee requests funds to meet immediate cash needs for the type of activities which the RLF is designed to fund, the grantee must use program income on hand to meet those needs before any additional ICDBG grant funds are drawn down. The grantee may have to use a combination of ICDBG grant funds and program income to meet the business loans' cash needs. Revolving loan funds are capitalized with program income, not grant funds. Grant funds are awarded and budgeted for specific business loans.*~~ ~~*(7-6-94)*~~

~~***173. CARRY FORWARD OF PROGRAM INCOME TO SUBSEQUENT GRANTS.***~~
~~*If the grantee has a concurrent, open grant contract, the program income received from previous grants (before and after the previous grant closeout) shall be treated as program income of the active grant contract and shall be subject to the ICDBG requirements and the terms of the grant contract.*~~ ~~*(7-6-94)*~~

~~***174. REPORTING OF PROGRAM INCOME.***~~
~~*Grantees shall record the receipt and expenditure of revenues related to the project as a part of the grant project transactions. This includes the receipt and expenditure of program income received by sub-grantees such as local development corporations and sewer and water districts. The grantee is responsible for ensuring sub-grantee's use of the program income in accordance with these rules.*~~ ~~*(7-6-94)*~~

~~***175. RE-USE PLANS FOR PROGRAM INCOME.***~~
~~*The local government shall include in the Application a re-use plan for any program income expected to be received from the grant funds. The plan shall identify the project's national objective, identify the eligible activity(ies), provide a time frame for project completion, and identify the process and procedure for using the program income. Use of funds must meet the requirements of Section 074. This plan shall be reviewed and modified, if necessary, and approved along with the Application. The plan shall become part of the grant project and govern the use of program income. The Department may require changes to be made at any time to ensure program income is used in accordance with ICDBG rules and HUD guidelines. For specific applicable requirements on program income see appropriate Subsections in Section 171 of this rule.*~~ ~~*(7-6-94)*~~

~~***176. PROGRAM INCOME ON HAND AT CLOSEOUT OF GRANT.***~~

~~***01. Closing Procedure****. When preparing to close a grant with a grantee, the Department must ascertain what program income, if any, the grantee or sub-grantee has earned through the use of ICDBG funds. The Department may close the grant, even though program income governed by the ICDBG requirements remains on hand, and does not need to wait until the program income has been expended.*~~ ~~*(7-6-94)*~~

~~***02. Restrictions on Use****. If program income is held by the local government (or a sub-grantee) when the grant is closed, this program income shall be used in accordance with the provisions of Title I of the Housing and Community Development Act of 1974, as amended, and Subpart I of Part 570, and IDAPA 28.02.01.*~~ ~~*(7-6-94)*~~

~~***03. Return of Income to the Department****. The program income shall be returned to the Department if the following conditions exist: the program income cannot be spent on the same community development activity from which the program income was generated. The same activity is the activity as defined in Section 022, entitled Eligible Activities, which was the basis for awarding the original grant; and there is no expectation of additional program income.*~~ ~~*(7-6-94)*~~

~~***04. Usage After Closeout****. If the grantee is allowed to keep the program income received prior to closeout, the grantee shall have twelve (12) months from the date of closeout, to identify an approved eligible project on which to spend the program income. Any unobligated program income at the end of the twelve (12) months shall be returned to the Department.*~~ ~~*(7-6-94)*~~

~~***177. – 180. (RESERVED).***~~

~~***181. PROGRAM INCOME REMAINING IN CLOSED OUT PROJECTS.***~~

~~***01. Receipt of Income After Closeout**. Except as otherwise provided under the terms of the grant or the closeout agreement, program income received after grant closeout may be treated by the grantee as miscellaneous revenue, the use of which is not subject to the requirements of the Act and Subpart and these rules, notwithstanding any subsequent participation by the unit of local government in a community development grant program. (7-6-94)~~

~~***02. Existing Income as of October 1, 1990**. In those projects closed out prior to October 1, 1990 where program income exists that is still governed by ICDBG rules, the Department shall require the grantee to develop or update the program income re-use plan to identify specific eligible activities on which to use the program income. The grantee shall have six (6) months starting October 1, 1990 in which to identify and receive Department approval of the project. They shall have an additional six (6) months within which to expend the program income on the approved project. By October 1, 1991 any existing program income in closed out projects shall be expended or returned to the Department. (7-6-94)~~

~~***182. ADMINISTRATIVE COSTS PAID FROM PROGRAM INCOME.***~~
~~*In addition to the budgeted administrative line item, a grantee or sub-grantee may use up to ten percent (10%) of any program income received for eligible administrative costs incurred. All costs and the accounting of such costs shall be in accordance with OMB Circulars A-102, A-87, A-110 and A-122. The total of administrative costs incurred by the grantee and its sub-grantee shall not exceed ten percent (10%) of the total grant and ten percent (10%) of any program income. (7-6-94)*~~

~~***183. RECIPIENT ACCOUNTING SYSTEM FOR PROGRAM INCOME.***~~
~~*The Department requires that program income be subject to all ICDBG requirements. The Department requires that a process be established at the local level to identify and account for program income. (7-6-94)*~~

~~***01. Objectives**. The accounting system objectives are to provide a means for the recording of program income in the accounting records, provide a methodology for assuring that all program income is collected and properly classified, and assure that the handling of program income complies with federal and state requirements. (7-6-94)*~~

~~***02. Accounts**. The typical accounting entry to record program income is a debit to "cash" or "accounts receivable" and a credit to "program income." At the completion of the grant program, the program income account balance should be equal to the total amount of program income received and applied to the program. Once the proper accounts are established, accounting procedures and internal controls must be adequate to assure that all program income is properly recognized. This, in part, requires the recipient to establish a system which allows it to anticipate repayments of loans and take appropriate actions when loan repayments are delinquent. Program income recording involves a minimum of two (2) ledger accounts: (7-6-94)*~~

~~***a.** Cash Account. The cash account is debited when the program income is received and credited when it is disbursed. Generally, it will not be necessary for a recipient to establish a new cash account on its books for program income since all receipts for a particular grant may be included in the cash account already established by the recipient. Likewise, it is not necessary to establish a separate bank account for program income. A recipient may include program income cash in its bank account with other cash, provided its accounting records adequately disclose the ICDBG portion of the cash balance. (7-6-94)*~~

~~***b.** Program Income Account. This account should be classified as a revenue account similar to the ICDBG grant account. Additional program income accounts may be established to reflect the different types of program income which may be received. (7-6-94)*~~

~~***184. PROCEDURES FOR PROGRAM INCOME ACCOUNTING SYSTEM.***~~

~~***01. Principal Factors**. The principal factors to be addressed by the recipient's accounting procedures and internal controls include: procedures to assure collection of all program income due to the recipient (e.g., loan payments); procedures to assure that all funds received by the recipient are accurately classified and coded to the accounts to be credited; procedures to safeguard and prevent the misappropriation of funds; procedures to assure that funds are immediately deposited into the proper bank account; and procedures to assure that program income funds are disbursed before requesting additional grant funds. (7-6-94)*~~

~~***02.*** ***Retaining and Expending Program Income****. Recipients that retain and expend program income on their programs are required, by the Department, to include program income data in the financial reports in requests for funds to the Department.* *(7-6-94)*~~

1~~85~~72. -- 190. (RESERVED).

191. CONFLICT OF INTEREST.

~~***01.*** ***Policy.***~~ It is the policy of the ICDBG Program that the grant management shall be conducted in an equitable manner and that public funds shall be expended in a fair, efficient and effective manner. Therefore every effort should be made to assure the public that no conflicts of interest exist in the management of the program funds and that those cases that do occur from time to time shall be disclosed and that appropriate actions have been taken to avoid and abstain from conflict of interest situations. The Conflict of Interest Policy shall be administered in accordance with Sections 59-701 through 59-705, Idaho Code, "Ethics in Government Act of 1990," and 24 CFR 570.611 (see Subsection 004.02). ~~*(7-6-94)*~~(7-1-09)T

~~***02.*** ***General Standard of Conduct****. The general standard of conduct is to avoid any action that might result in or create the appearance of using public office for private gain; or giving preferential treatment to anyone; or impeding governmental efficiency or economy; or the loss of independence and impartiality in the decision-making process; or making decisions outside of the official decision-making process; or creating a lack of public confidence in the integrity of the government.* *(7-6-94)*~~

~~***03.*** ***Conflicts****. The general rule that shall be followed is that a covered person (described in Section 192) who exercises or has exercised any functions or responsibilities with respect to ICDBG activities or who is in a position to participate in a decision making process or gain inside information with regard to such activities, shall not obtain any personal interest or any financial interest or program/project benefit, except for approved eligible administrative or personnel costs, from the activity or have any interest in any contract, subcontract or agreement, or proceeds either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter.* *(7-6-94)*~~

~~***04.*** ***Additional Requirements****. These rules supplement requirements contained in Section 59-701 through 59-705, Idaho Code "Ethics in Government Act of 1990" and Code of Federal Regulations 24 CFR 570.611 "Conflict of Interest."* *(7-6-94)*~~

~~***192. PERSONS COVERED.***~~

~~***01.*** ***Persons Covered****. These conflict of interest provisions shall apply to any person who is a (an) employee, agent, contractor, consultant, official, officer, elected official, or appointed official of the Department or any city or county grantee or any sub-grantee receiving funds from the ICDBG program.* *(7-6-94)*~~

~~***02.*** ***Kinship Definition****. Family ties are defined as kinship relationships and dependents. Kinship includes grandparents, parents, aunts and uncles, children, siblings, grand children and in-laws of the same types.* *(7-6-94)*~~

~~***03.*** ***Business Tie Definition****. A business tie is defined as: having more than a five thousand dollar ($5,000) value interest in any sole proprietorship, partnerships, association, trust, estate, business trust, for profit corporation, not-for-profit corporation, or any other legal entity; or being a (an) agent, director or officer, or employee thereof.* *(7-6-94)*~~

~~***193. TYPES OF CONFLICTS.***~~
~~*An official, officer, employee or agent of the Department, of a grantee or a sub-grantee shall neither profit financially, directly or indirectly, from ICDBG funds under their control or authority; nor shall they have a private business tie, financial, personal, or a family in any contract or grant made by them in their official capacity or under their authority; nor shall they have conflicting responsibilities in the management of the grant funds.* *(7-6-94)*~~

~~***194. DISCLOSURE PROCEDURES.***~~

~~**01. Disclose**. Any covered person having an interest in any discretionary matter concerning the grant coming before him in the daily course of his official duties, whether the matter be regulatory, contractual, or the formation of public policy, shall not act, but immediately disclose the conflict of interest and withdraw from the proceedings. They shall then refrain from any discussion, recommendation, action, or voting on the matter. (7-6-94)~~

~~**02. Disclosure Into Minutes**. At or before any meeting during which a conflict of interest arises, a covered person shall make a Declaration of a Conflict of Interest, or potential conflict of interest, either by letter or verbal declaration and it shall be entered in to the minutes of the meeting. (7-6-94)~~

~~**03. Contents of Disclosure**. The declaration shall contain the nature of the conflict, the parties involved in the conflict, the impact of the conflict on their duties, and the method of resolving the conflict. For example: If a city council member is a partner in a construction company bidding on an ICDBG-funded project the declaration would include a statement to the effect that Councilman X, being a full partner in XYZ Construction Company, will not be able to participate in reviewing bid proposals, and if awarded, will refrain or absent himself from discussing or voting on any actions involving the Company, including payments, change orders, contract negotiations, etc. (7-6-94)~~

~~**04. ICDBG Project Files**. The documentation shall also be maintained in the ICDBG project files. (7-6-94)~~

~~**195. – 200. (RESERVED).**~~

~~**201. EXCEPTIONS AND WAIVERS.**~~
~~Upon the written request of the grantee, the Department may grant an exception to the Conflict of Interest restrictions on a case-by-case basis when the Department determines that such an exception will serve to further the purposes of a grant project and the effective and efficient management of the grantee's program or project. An exception may be considered only after the grantee has provided the following: a disclosure of the nature of the conflict, accompanied by documentation that there has been public disclosure of the conflict and a description of how the public disclosure was made; and an opinion of the grantee's attorney that the conflict of interest situation for which the exception is sought would not violate these rules or any other state law or local ordinance. (7-6-94)~~

~~**202. FACTORS TO BE CONSIDERED, BY THE DEPARTMENT, FOR EXCEPTIONS.**~~
~~In determining whether to grant a requested exception, after the grantee has satisfactorily met the requirements of Section 201, the Department shall consider the cumulative effect of the following factors, where applicable: (7-6-94)~~

~~**01. Significant Cost Benefit or Expertise**. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available. (7-6-94)~~

~~**02. Open Competitive Bidding or Negotiation**. Whether an opportunity was provided for open competitive bidding or negotiation. (7-6-94)~~

~~**03. Low to Moderate Income Persons**. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity and the exception will permit such person to receive generally the same interests or benefits as are provided to the group or class. (7-6-94)~~

~~**04. Functions, Responsibilities or the Decision Making Process**. Whether the affected person has withdrawn from the functions, responsibilities or the decision-making process with respect to the specific assisted activity in question. (7-6-94)~~

~~**05. Interest or Benefit**. Whether the interest or benefit was present before the affected person was in a position as described in Section 191. (7-6-94)~~

~~**06. Undue Hardship**. Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict. (7-6-94)~~

~~***07. Any Other Relevant Consideration.*** *(7-6-94)*~~

~~***203. DEPARTMENT-GRANTED EXEMPTIONS OR WAIVERS.***~~
~~*The Department shall grant a waiver or exemption by letter which shall describe: the nature of the conflict, the parties involved, the nature of their responsibilities, the opinion of the local government attorney that the above requirements have been met, and any conditions, safeguards or actions the person and the grantee must take to ensure the conflict is limited or resolved.* *(7-6-94)*~~

~~***204. EFFECT OF VIOLATIONS AND PENALTIES.***~~
~~*Any covered person who intentionally or negligently fails to disclose a conflict of interest shall be subject to the penalties contained in Section 59-705, Idaho Code which provides for a maximum fine of five hundred dollars ($500). Actions in Violation of Rules. The Department may determine any action in violation of these conflict of interest rules to be null and void.* *(7-6-94)*~~

192. -- 204. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

213. GRANT ADMINISTRATOR APPLICATION PROCESS AND ANNUAL REVIEW.
To apply for grant administrator certification status individuals shall submit an application to the Department. Applicants shall submit a letter requesting approval and a resume describing their experience and performance. The Department will review the application, the examination results and the Department's experience with the individual (Subsection 212.02). This application and review will occur on an ~~*annual*~~ as needed basis beginning with the annual grant awards. The Department will determine when an individual has sufficient qualification and experience to be placed on the approved grant administrator list. ~~*(3-30-07)*~~(7-1-09)T

IDAPA 30 - IDAHO COMMISSION FOR LIBRARIES

30.01.01 - RULES OF THE IDAHO COMMISSION FOR LIBRARIES GOVERNING THE USE OF COMMISSION SERVICES

DOCKET NO. 30-0101-0901

NOTICE OF RULEMAKING - 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 33-2503, 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 15, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These proposed rule changes clarify grant application procedures and aid applicants in applying for available funding by eliminating unnecessary references to state documents and by providing a website address. The proposed rule changes clarify the Commission's grant application process procedure, and provide a website address to the Library Services and Technology Act legislation.

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: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking, which published in the January 7, 2009 Administrative Bulletin, Vol. 09-1, pages 425 through 426, and because the rulemaking is not controversial and confers a benefit upon LSTA grant applicants.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ann Joslin, State Librarian, (208) 334-2150.

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 22, 2009.

DATED this 19th day of May, 2009.

Ann Joslin
State Librarian
Idaho Commission for Libraries
325 W. State St.
P. O. Box 83720
Boise, ID 83702
Phone: (208) 334-2150
Fax: (208) 334-4016

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 30-0101-0901

004. INCORPORATION BY REFERENCE.

~~***01. Federal Law.***~~ The Library Services and Technology Act, 20 U.S.C.A. Section 9121, et. seq., as set forth in Title II of the Museum and Library Services Act, Public Law 108-81, effective September 25, 2003. Copies of the Library Services and Technology Act are available at the offices of the Commission and at http://imls.gov/about/services2003.shtm. ~~*(4-2-08)*~~(____)

~~***02. Application Process Guides.*** *Grants may be made with monies pursuant to procedures set forth in the respective LSTA Guide. Copies of the Guides are available on the Commission's website or at the offices of the Commission.* *(4-2-08)*~~

~~***a.*** *The FY2006 LSTA Guide, effective May 2005.* *(4-2-08)*~~

~~***b.*** *The FY2007 LSTA Guide, effective September 2006.* *(4-2-08)*~~

~~***c.*** *The FY2008 LSTA Guide, effective August 2007.* *(4-2-08)*~~

(BREAK IN CONTINUITY OF SECTIONS)

023. ~~*PROCESS FOR GAINING ACCESS TO THE SERVICE*~~ LSTA GRANT PROGRAM.

~~***01. Application Process.*** *The application process for funds (under the LSTA grant programs described in Sections 020, 021, and 022 of these rules) from each annual allotment is described in the Commission's LSTA Guide, available in print at the Commission offices and on the Commission's website.* *(4-2-08)*~~

~~***02. Application Forms.***~~ All applicants seeking to participate in any LSTA grant program must apply on forms provided by the Commission. ~~*(4-2-08)*~~(____)

IDAPA 30 - IDAHO COMMISSION FOR LIBRARIES

30.01.01 - RULES OF THE IDAHO COMMISSION FOR LIBRARIES GOVERNING THE USE OF COMMISSION SERVICES

DOCKET NO. 30-0101-0902

NOTICE OF RULEMAKING - 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 33-2503, 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 15, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule is necessary to establish rules regarding the circulation of materials and equipment to eligible blind and physically handicapped persons who are registered with the Idaho Talking Book Service, and to provide for the suspension of services resulting from violations of the rule requirements. The proposed rule provides for patron status, the types of materials and equipment to be loaned, the quantity of materials and the period of time to be loaned, and the procedures for suspending service for repeated violations of the rules.

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: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted prior to the publication of the proposed rule because the proposed rule confers benefits to the identifiable interested parties (i.e., persons with disabilities), and because of the simple nature of the proposed rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ann Joslin, State Librarian, (208) 334-2150.

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 22, 2009.

DATED this 19th day of May, 2009.

Ann Joslin
State Librarian
Idaho Commission for Libraries
325 W. State St.
P. O. Box 83720
Boise, ID 83702
Phone: (208) 334-2150
Fax: (208) 334-4016

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 30-0101-0902

041. -- ~~99~~4~~9~~9. (RESERVED).

050. TALKING BOOK SERVICE (TBS).

01. Patron Status. ( )

a. Active status. To remain active, users must borrow at least one (1) book per year or subscribe to at least one (1) magazine provided through the service. ( )

b. Changes of status. The user must notify the Talking Book Service of address changes, a desire to cancel the service, and temporary or permanent service transfer to another state. ( )

c. Good standing. To receive a digital player and books, user's account must reflect: ( )

i. The current permanent mailing address and contact information; ( )

ii. No history of lost machines as defined by library procedures or more than one (1) Recorded Cassette (RC) player currently checked out; and ( )

iii. No more than four (4) overdue cassette titles. ( )

02. Materials Loaned. ( )

a. Formats. Recorded books, magazines, and descriptive videos and discs are loaned free to eligible registered users. The Talking Book Service keeps records of all loans. ( )

b. Equipment. Equipment necessary to listen to recorded materials will be loaned for as long as the user meets National Library Service eligibility requirements and is using the equipment to listen to materials provided by the Talking Book Service. Materials received from sources other than the Talking Book Service do not qualify for continuance of service. Playback equipment needing repair must be returned to the Talking Book Service. A replacement will be provided upon request. The user should not attempt to repair the playback equipment or replace the battery. ( )

c. Sharing materials. Users may not lend Talking Book Service materials or equipment to other persons. ( )

03. Circulation. ( )

a. Number of titles loaned. Following is a list by format of the maximum number of titles each user may request. Once a user reaches the established maximum number of titles, no additional titles will be sent in that format until outstanding titles are returned. A user may request a change in the number of titles received at any time, up to the maximum. ( )

i. Cassette books: Unlimited. ( )

ii. Digital books: Two (2). ( )

iii. Descriptive videos and discs: Two (2). ( )

iv. Magazines: Unlimited. ( )

b. Loan periods: ( )

i. Cassette books: Six (6) weeks. ( )

ii. Digital books: Two (2) weeks, with one (1) two-week renewal. ( )

iii. Descriptive videos and discs: Two (2) weeks. ( )

iv. Magazines in green mailing containers: Two (2) weeks. ( )

v. Magazines in cardboard containers: Do not return. ( )

c. Overdue materials. Users are urged to return materials promptly so they can be circulated to other patrons. Service for digital books will be suspended if a digital book is more than two (2) weeks overdue. ( )

d. Fines. No fines are levied for materials returned later than the circulation due date. ( )

e. Returning materials. Materials can be returned free via the United State Postal Service using Free Matter for the Blind mailing cards. Place materials in a mailbox or take them to the Post Office. ( )

f. Lost or damaged materials. The user is charged a replacement fee for each lost or damaged descriptive video or disc as outlined in Section 33-2620, Idaho Code, "Failure to Return Borrowed Material." ( )

04. **Service Suspension**. If any of the rules of Section 050 of these rules are repeatedly violated, the user's service may be suspended pursuant to the following suspension procedure: ( )

a. Service staff will discuss the violation with the user. ( )

b. A warning letter will be sent to the user that summarizes the discussion and the violation. The user will have an opportunity to reply within ten (10) business days. ( )

c. If rule violations continue, a second warning letter will be sent citing the earlier warning letter and listing examples of subsequent violations. The service can be suspended for up to six (6) months. A specific date to reinstate service will be included in this letter. The user will have an opportunity to reply within ten (10) business days. ( )

d. When service is reinstated, a letter will be sent notifying the user of reinstatement of service and reminding the user that further documented violations will result in another suspension of service. ( )

051. -- 999. **(RESERVED).**

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0901

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2009.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 63-105A, Idaho Code, and the repeal of Section 63-602FF, Idaho Code.

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

Rule 217 needs to be amended as the county assessors need to complete the assessment rolls immediately. SB 1138, effective January 1, 2009, changes the method for appraising low income housing projects. The assessors immediately need to know how the capitalization rate is to be provided so that appraisals can be completed.

TEMPORARY RULE JUSTFICATION: 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:

In compliance with deadlines in amendments to governing law.

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

FISCAL IMPACT: Not applicable, this rule does not result in any measurable fiscal impact beyond that resulting from the legislation.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Alan Dornfest at (208) 334-7530.

DATED this 29th day of May, 2009.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEMPORARY TEXT OF DOCKET NO. 35-0103-0901

217. RULES PERTAINING TO MARKET VALUE DUTY OF COUNTY ASSESSORS (RULE 217).
Sections 63-205A and 63-208, Idaho Code. ~~*(3-30-07)*~~(1-1-09)T

01. ~~*Market Value*~~ Definitions. (1-1-09)T

a. Market Value. Market value is the most probable amount of United States dollars or equivalent for which a property would exchange hands between a knowledgeable and willing seller, under no compulsion to sell, and an informed, capable buyer, under no compulsion to buy, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. ~~(7-1-97)~~(1-1-09)T

b. Housing Tax Credits. The "housing tax credits" are the total federal income tax credits allocated by the Idaho Housing and Finance Association to the project either in an original allocation or a new allocation. (1-1-09)T

c. The Amount of Housing Tax Credits. The "amount of housing tax credits" is the housing tax credits divided by the number of years of the term of the tax credit regulatory agreement between the original project developer and the Idaho Housing and Finance Association. (1-1-09)T

d. Existing Section 42 Project. An "existing Section 42 project" is a Section 42 low income project for which housing tax credits were entirely distributed before January 1, 2009. The amount of housing tax credits shall not be used in the appraisal of existing Section 42 projects. The amount of tax credits shall, for the duration of the tax credit regulatory agreement, be used in the income approach if considered for the appraisal of Section 42 projects that have received or will receive an allocation of housing tax credits after January 1, 2009. (1-1-09)T

~~a~~02. **Fee Simple Interest to be Used**. The assessor shall value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions shall be subtracted. ~~(7-1-97)~~(1-1-09)T

~~b~~03. **Personal Property**. Personal property shall be valued at retail level. ~~(7-1-93)~~(1-1-09)T

0~~2~~4. **Appraisal Approaches**. Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are: (3-30-07)

a. The sales comparison approach; (3-30-01)

b. The cost approach; and (3-30-01)

c. The income approach. (3-30-01)

0~~3~~5. **Appraisal Procedures**. Market value for assessment purposes shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. (3-30-07)

a. The appraisal procedures, methods, and techniques using the income approach to determine the market value for assessment purposes of income producing properties, except those described in ~~P~~Subparagraph 217.03.b.iii. of this rule, must use market rent, not contract rent. ~~(3-30-07)~~(1-1-09)T

b. When considering all three approaches to value in appraising Section 42 low income housing projects, the appraisal procedures, methods, and techniques~~, using the income approach to determine the market value for assessment purposes of low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, must use actual rent plus the monetary benefit of any income tax credits.~~ must comply with the following special conditions: ~~(3-30-07)~~(1-1-09)T

i. When using the cost approach, an adjustment shall be made recognizing the possible market share limitation and rental rate restriction as imposed by the development's tax credit regulatory agreement. (1-1-09)T

ii. When using the sales comparison approach, sales of Section 42 low income housing properties shall be used as comparable sales. When such sales are not available sales of non-Section 42 apartment properties may be used. (1-1-09)T

iii. When using the income approach, actual rents must be used in the calculation of net income if the financial statements described in Subsection 217.07 of this rule are provided by the owners of Section 42 properties.

The amount of housing tax credits, when applicable to the appraisal, shall not be included in the net income capitalized to value but shall be added to the capitalized net income. (1-1-09)T

iv. The exemption provided by Section 63-205(A)(2)(f) Idaho Code, applies only to the difference in value due to not adding an amount to the income approach for those Section 42 properties no longer receiving tax credits at January 1, 2009. It does not apply to the income approach that would use market expenses and income as provided for in Section 63-205(A)(2)(d) Idaho Code, applicable to those properties for which financial statements have not been made available. (1-1-09)T

06. Capitalization Rates for Section 42 Low Income Properties. If, by the time the Tax Commission provides the financial statements to the county assessor, verifiable sales data has not been made available to the Tax Commission for three (3) or more Section 42 sales, the capitalization rate shall be determined by the assessor who may consider the capitalization rates derived from non-Section 42 housing project sales in determining the capitalization rate to be used in the income approach for Section 42 projects. (1-1-09)T

07. Financial Statements to be Provided by the Owners. The owners of Section 42 properties shall, by May 1, 2009, provide to the Tax Commission the prior year's financial statements. The Tax Commission shall forward to the assessor all financial statements received from the owners of Section 42 properties. The income approach will be prepared as follow: (1-1-09)T

a. If such financial statements are provided by May 1, 2009, then the assessor shall determine any income approach value using the procedures described in Subparagraph 217.05.b.iii. of these rules. (1-1-09)T

b. If such financial statements are not provided by May 1, 2009, then the assessor shall determine any income approach value by using market rents of non-Section 42 housing complexes and expenses applicable to non-Section 42 housing complexes, but shall not add the amount of housing tax credits to the capitalized net income. (1-1-09)T

0~~4~~8. Cross Reference. For ~~*clarification of the income*~~ justification to ~~*include when using the income approach to value*~~ consider the income tax credits when valuing Section 42 low-income housing properties ~~*receiving tax credits under Section 42 of the Internal Revenue Service Code*~~, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). ~~*(3-30-07)*~~(1-1-09)T

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

TUESDAY - JULY 14, 2009 - 1:30 - 3:30 p.m.

IDAHO STATE TAX COMMISSION
800 Park Blvd. Plaza IV
Boise, ID 83712
1st Floor, Conference Room 5

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking must do the following:

Participants may provide oral presentations and/or submit written comments that identify the participant's specific problems with the rule and recommended solutions. Participants wishing to attend the meeting should contact Shelley Sheridan at (208) 334-7544.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Administration and Enforcement Rule 200 addresses the examination of books, witnesses, and discovery. With the continual changes to and advancements in information technology in recent years, the Tax Commission is faced with increased challenges in auditing taxpayer books and records. Encouraging taxpayers to make available to auditors electronically generated books and records would increase the efficiency of these audits by minimizing the amount of taxpayer time and resources as well as state resources that are expended as a result of the audit. The ability to retain either an electronic reproduction or a hard copy of records reviewed during an audit is also vital to the successful resolution of an audit.

As a result of these issues, the Tax Commission is amending Administration and Enforcement Rule 200. Provisions previously enacted by the Multistate Tax Commission and other states will be considered for inclusion in the rule, including definitions related to information technology.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 10, 2009.

DATED this 29th day of May, 2009.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
Phone: (208) 334-7530
Fax: (208) 334-7844

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

DOCKET NO. 47-0101-0801

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 47-0101-0801. This agency action for this final rulemaking is authorized pursuant to Section 33-2211 and 33-2303, Idaho Code.

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

Pursuant to House Concurrent Resolution 9, Docket No. 47-0101-0801 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following changes are being made to the final rule:

> Proposed amendments to Subsections 100.01, 100.02, and 100.03, relating to Client/Participant Appeals, and Section 301, relating to Transparency, have been rejected by HCR 9 and will remain as previously codified. The codified text is printed following this notice.

The original text of the proposed rule was published in the October 1, 2008, Idaho Administrative Bulletin, Vol. 08-10, Book 2, pages 471 through 474. The pending rule was published in the January 7, 2009, Idaho Administrative Bulletin, Vol. 09-1, page 448.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Tracie Bent at (208)332-1582.

DATED this 15th day of May, 2009.

Tracie Bent
Planning, Policy and HR Officer
State Board of Education
650 West State Street
PO Box 83720-0037
Boise, ID 83720-0037
(208) 332-1582 phone
(208) 334-2632 FAX

THE FOLLOWING IS THE FINAL TEXT OF THE SECTIONS AFFECTED BY HCR 9

100. CLIENT/PARTICIPANT APPEALS.
In accordance with 34 CFR Part 361.57, the client/participant appeals process is governed by Section 100 of these rules and is outlined in the Division's agency Field Services Manual that is incorporated by reference into these rules in Subsection 004.01.b. (See http://www.vr.idaho.gov/). (2-17-09)

01. Informal Dispute Resolution. Within ten (10) calendar days of notification of the contested action, lack of action or decision, the client/participant may request that an Informal Dispute Resolution be held. The

request shall be made in writing to the Regional Manager. The written request should state the reason for the review. (5-3-03)

a. The Regional Manager shall inform the client/participant in writing as to the time, place, and date of the Informal Dispute Resolution. The client/participant may choose to represent himself/herself or may have a representative(s) speak on his/her behalf. (5-3-03)

b. The Regional Manager will make a decision regarding the specifics of the Informal Dispute Resolution. This decision will be in written form and it will be sent to the client/participant, with a copy in the case file. (5-3-03)

02. **Mediation**. The request shall be made in writing to the Regional Manager. A written request should state the reason for the review. The Mediation must take place within the sixty (60) day requirement for an Impartial Due Process Hearing. (5-3-03)

03. **Impartial Due Process Hearing**. An Impartial Due Process Hearing can be held without an Informal Dispute Resolution or Mediation or if the client/participant is dissatisfied with the result of the Informal Dispute Resolution or Mediation. The Impartial Due Process Hearing will deal with the issues involved in the original Informal Dispute Resolution or Mediation, if one took place. The request for an Impartial Due Process Hearing will be made in writing to the Administrator of the Division within ten (10) calendar days of the Regional Manager's decision from the Informal Dispute Resolution or the Mediation Agreement from Mediation. The hearing by an impartial hearing officer must be held within sixty (60) days of a request by the client unless both parties agree to a specified delay. (5-3-03)

Section 301 remains as previously codified.

301. -- 999. (RESERVED).

IDAPA 52 - IDAHO STATE LOTTERY

52.01.02 - GAMING RULES OF THE IDAHO STATE LOTTERY COMMISSION

DOCKET NO. 52-0102-0801

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 52-0102-0801. This agency action for this final rulemaking is authorized pursuant to Section 67-7714, Idaho Code.

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

Pursuant to House Concurrent Resolution No. 10, Docket No. 52-0102-0801 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following changes are being made to the final rule:

> Amendments made to Section 303, relating to Limitation of Involvement by For-Profit Businesses, and Section 304, relating to Compensation of Certain Persons and Contracts with Certain Persons Prohibited, have been rejected by HCR 10 and will remain as previously codified. The codified text is printed following this notice.

The original text of the proposed rule was published in the September 3, 2008 Idaho Administrative Bulletin, Vol. 08-9, pages 253 through 261. The pending rule was published in the November 5, 2008 Idaho Administrative Bulletin, Vol. 08-11, page 92.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Amber French, Security Director, (208) 334-2277.

DATED this 4th day of May, 2009.

Jeff Anderson, Director
Idaho State Lottery
1199 Shoreline Ln., Ste. 100, Boise, ID 83702
Phone: (208) 334-2600 / Fax: (208) 334-2610

THE FOLLOWING IS THE FINAL TEXT OF THE SECTIONS AFFECTED BY HCR 10

303. MULTIPLE CHAPTERS LICENSED TOGETHER (RULE 303).
Different chapters of an organization may apply for and share one (1) raffle license so long as the information required in Subsections 302.01 through 302.06 of these rules is provided to the Lottery before the issuance of the license. See Section 67-7711(4), Idaho Code. When two (2) or more chapters share a license, in aggregate they are subject to the limitations of a single organization with a license; multiple chapters sharing a license are not entitled to multiples of the event or prize limits for a license. (7-1-97)

304. COMPENSATION OF CERTAIN PERSONS AND CONTRACTS WITH CERTAIN PERSONS PROHIBITED (RULE 304).
Persons listed on the application as officers or directors and their relatives and members of their household are prohibited from being compensated for their participation in the organizations bingo operation. No organization shall contract with any person not employed by, or a volunteer for, the organization for the purpose of conducting a bingo game or raffle on the organizations behalf. See Section 67-7711(3), Idaho Code. (7-1-97)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0902

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

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

TUESDAY - AUGUST 4, 2009 - 3:30 p.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Conference Room B
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The Rules for the Control of Air Pollution in Idaho limit, for fuel burning sources, the amount of sulfur allowed in residual fuel oil, distillate fuel oil, and coal. This limits the flexibility of industries to use less expensive alternative fuels with higher sulfur contents. DEQ has initiated this rulemaking to allow industries a less expensive alternative to current fuels with no additional environmental impact. The revisions included in this proposed rule allow for higher sulfur content fuels to be used in fuel burning equipment in Idaho as long as the resulting emissions are at levels equal to or lower than those provided for in the existing rules.

Members of the regulated community who may be subject to Idaho's air quality rules, as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. It is this addition to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2010 legislative session if adopted by the Board and approved by the Legislature.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815. On April 1, 2009, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 09-4, page 40. On April 15, 2009, a preliminary draft negotiated rule was made available for public review. One meeting was held on April 14, 2009. Members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

FISCAL IMPACT STATEMENT: 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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before August 4, 2009.

DATED this 29th day of May, 2009.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-0902

725. RULES FOR SULFUR CONTENT OF FUELS.
This section applies to fuel burning sources in Idaho. Its purpose is to prevent excessive ground level concentrations of sulfur dioxide. The reference test method for measuring fuel sulfur content shall be ASTM method, D129-95 Standard Test for Sulfur in Petroleum Products (General Bomb Method) or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (5-8-09)

01. Definitions. (5-8-09)

a. ASTM. American Society for Testing and Materials. (5-1-94)

b. Distillate Fuel Oil. Any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils. (5-1-94)

c. Residual Fuel Oil. Any oil meeting the specifications of ASTM Grade 4, Grade 5 and Grade 6 fuel oils. (5-1-94)

02. Residual Fuel Oils. No person shall sell, distribute, use or make available for use, any residual fuel oil containing more than one and three-fourths percent (1.75%) sulfur by weight. (5-8-09)

03. Distillate Fuel Oil. No person shall sell, distribute, use or make available for use, any distillate fuel oil containing more than the following percentages of sulfur: (5-8-09)

a. ASTM Grade 1. ASTM Grade 1 fuel oil - zero point three percent (0.3%) by weight. (5-8-09)

b. ASTM Grade 2. ASTM Grade 2 fuel oil - zero point five percent (0.5%) by weight. (5-8-09)

04. Coal. No person shall sell, distribute, use or make available for use, any coal containing greater than one percent (1.0%) sulfur by weight. (5-8-09)

05. Exemptions. The Department may approve an exemption from the requirements of Subsections 725.01 through 725.04 if the applicant demonstrates that, through control measures or other means, sulfur dioxide emissions are equal to or less than those resulting from the combustion of fuels complying with the limitations of Subsections 725.01 through 725.04. (____)

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT
TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

The written comment submission deadline is July 22, 2009 unless otherwise listed.
(Temp & Prop) indicates the rule is both temporary and proposed.
(*PH) indicates that a public hearing has been scheduled.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
PO Box 790, Boise, ID 83701-0790

02-0602-0901, Rules Pertaining to the Idaho Commercial Feed Law. Incorporates by reference the 2010 AAFCO official publication.

02-0612-0901, Rules Pertaining to the Idaho Fertilizer Law. Incorporates by reference the 2010 AAPFCO official publication.

02-0641-0901, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001. Incorporates by reference the 2010 AAPFCO official publication.

IDAPA 07 - DIVISION OF BUILDING SAFETY
1090 E. Watertower St., Meridian, ID 83642

07-0301-0901, Rules of Electrical Licensing and Registration - General. (Temp & Prop)
07-0104-0901, Rules Governing Electrical Specialty Licensing. (Temp & Prop)
Both rulemakings comply with statutory change by providing a staggered system for issuing and renewing licenses and terms of licensure renewal.

07-0312-0901, Rules Governing Manufactured or Mobile Home Installations. (Temp & Prop) Requires that all new HUD manufactured homes be installed in accordance with manufacturer's HUD approved installation instructions.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036

16-0301-0901, Eligibility for Health Care Assistance for Families and Children. (Temp & Prop) Extends Afghani immigrant benefits to 8 months; deemed newborn remains eligible regardless of mother's eligibility or whether living with birth mother; aligns citizenship and identification documentation requirements with federal regulations for waived newborns, tribal members; excludes income as required and defined in federal law; deletes reporting requirements and income test from Transitional Medicaid.

16-0305-0902, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled. (*PH) (Temp & Prop) Fee rules provides for cost-sharing for HCCDC, also known as Katie Beckett.

16-0306-0901, Refugee Medical Assistance. (Temp & Prop)
16-0308-0901, Rules Governing the Temporary Assistance of Families in Idaho Program. (Temp & Prop)
Both rulemakings extend Afghani immigrant benefits from 6 to 8 months per federal law.

16.03.09 - Medicaid Basic Plan Benefits.
16-0309-0901, (Temp & Prop) Complies with Governor's executive order to reduce general fund expenditures by reducing reimbursement percentages to Medicaid providers of hospital services.
16-0309-0902, (Temp & Prop) Complies with HB 123 by eliminating out-of-state providers from receiving DSH payments.

16.03.10 - Medicaid Enhanced Plan Benefits.
16-0310-0903, (Temp & Prop) Complies with HB 123 through reductions in incentive payments to nursing facilities and in percentage increases to the inflation index used to calculate the nursing facility daily reimbursement rate.
16-0310-0904, (Temp & Prop) Freezes the daily reimbursement rate to ICFs/MR at the same daily rate for state fiscal year 2010 as state FY 2009.

16-0318-0901, Rules Governing Medicaid Cost-Sharing. (*PH) (Temp & Prop) Complies with HB 322 by adding a cost-sharing premium for HCCDC, also known as Katie Beckett.

16-0410-0901, Rules Governing the Community Services Block Grant Program. (Temp & Prop) Increases the income limit for program eligibility to 200% of the federal poverty guidelines.

16-0506-0901, Criminal History and Background Checks. (Temp & Prop) Adds individuals and providers to the list of those who are required to have checks and adds additional disqualifying crimes.

IDAPA 18 - DEPARTMENT OF INSURANCE
PO Box 83720, Boise, Idaho 83720-0043

18-0144-0901, Schedule of Fees, Licenses and Miscellaneous Charges. (Temp & Prop) Complies with HB 75 by setting forth required fees for persons registering as life settlement providers and life settlement brokers.

IDAPA 21 - DIVISION OF VETERANS SERVICES
320 Collins Road, Boise, ID 83702

21-0104-0901, Rules Governing the Idaho State Veterans Cemetery. (Amend to Temp & Prop) Complies with enforcement requirements of 38 CFR Section 39.5(d) by denying interment in the veterans cemetery to certain applicants for legal offenses.

IDAPA 23 - BOARD OF NURSING
PO Box 83720, Boise, ID 83720-0061

23-0101-0901, Rules of the Idaho Board of Nursing. Changes align with uniform rules of the Nurse Licensure Compact by: revising an existing definition; providing additional methods of proving an applicant's primary state of residency; and clarifying circumstances and procedures for issuance of a “single state” license where appropriate.

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION
PO Box 83720, Boise, ID 83720-0065

26-0120-0901, Rules Governing the Administration of Park and Recreation Areas and Facilities. (Temp & Prop) Prohibits endangering the life of any person or creature or, except as authorized, the indiscriminate discharging of a firearm on lands administered by the Department.

IDAPA 28 - DEPARTMENT OF COMMERCE
PO Box 83720, Boise ID 83720-0093

28-0201-0901, Idaho Community Development Block Grant Program. Increases flexibility in providing access to federal funding for city and county projects.

IDAPA 30 - COMMISSION FOR LIBRARIES
PO Box 83720, Boise ID 83702

30.01.01 - Rules of the Idaho Commission for Libraries Governing the Use of Commission Services.
30-0101-0901, Clarifies grant application process procedures and provides a website address to the Library Services and Technology Act legislation.
30-0101-0902, Establishes rules regarding the circulation of materials and equipment to eligible blind and physically handicapped persons and provides for suspension of services resulting from violations.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255

58-0101-0902, Rules for the Control of Air Pollution in Idaho. (*PH) Allows for use of higher sulfur content fuels in fuel burning equipment in Idaho if resulting emissions are at levels equal to or lower than those provided for in the existing rules. Comment by: 8/4/09.

THE FOLLOWING TEMPORARY RULES HAVE BEEN ADOPTED:

16-0304-0902, Rules Governing the Food Stamp Program in Idaho (Health & Welfare)
35-0103-0901, Property Tax Administrative Rules (Tax Commission)

NEGOTIATED RULEMAKING MEETINGS ARE BEING HELD ON THE FOLLOWING:

16-0602-0901, Rules Governing Standards for Child Care Licensing (Health and Welfare).
20-0304-0901, Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho (Lands).
20-0317-0901, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands (Lands).
35-0201-0901, Tax Commission Administration and Enforcement Rules (Tax Commission).

Please refer to the Idaho Administrative Bulletin, **July 1, 2009, Volume 09-7**, for all rulemaking notices and for the text of temporary, proposed and final rules, public hearings and negotiated rulemaking meeting schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at **adm.idaho.gov/adminrules/** or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

FOR THE ABOVE LINK TO WORK, YOU MUST BE CONNECTED TO THE INTERNET.

This index tracks the history of all agency rulemakings from 1993 to the present. It includes all rulemaking activities on each chapter of rules and includes negotiated, temporary, proposed, pending and final rules, public hearing notices and vacated rulemaking notices.

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