

Dear Senators LODGE, Broadsword & Werk, and
Representatives BLOCK, Nielsen & Henbest:

The Office of the Legislative Services, Research and Legislation, has received the enclosed rules of the Dept. of Health & Welfare: IDAPA 16.06.12 - Rules Governing The Idaho Child Care Program (ICCP)(Docket No. 16-0612-0801) - Temporary and Proposed.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 5-23-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 6-20-08.

_____The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: May 6, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.06.12 - Rules Governing The Idaho Child Care Program (ICCP)(Docket No. 16-0612-0801) - Temporary and Proposed

By this temporary and proposed rule docket (Docket No. 16-0612-0801) (hereinafter, “temporary and proposed rule”), the Department of Health and Welfare seeks to amend IDAPA chapter 16.06.12, dealing with Rules Governing the Idaho Child Care Program (ICCP). According to the Department, the proposed rule is authorized pursuant to section 56-202, Idaho Code. Section 56-202(b), Idaho Code, provides the Department with broad rulemaking authority to carry out Idaho’s public assistance law.

The Governor’s justification for the temporary rule is to confer a benefit and to simplify the processes for determining eligibility for assistance benefits. The temporary rule went into effect on May 1, 2008.

The purpose of the proposed rule, according to the Department, is to align the methodology used to calculate income for self-employed individuals applying for ICCP assistance with those used in other Department rules, thus simplifying the process of determining income for self-employed individuals who apply for assistance and reducing the opportunity for errors. The Department notes that it will no longer differentiate between farming and non-farming self-employment income when determining self-employment income for benefit assistance.

According to the Department, no fee or charge is imposed by the proposed rule or there will be no fiscal impact to the General Fund. The Department states that negotiated rulemaking was not conducted because this rule change confers a benefit to an individual applying for program assistance. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency not later than June 18, 2008. All written comments must be delivered to the Department on or before June 25, 2008.

ANALYSIS

The major change to section 200 under the temporary and proposed rule is the addition of self-employment as a qualifying activity for child care benefits. Self-employment is defined as being currently self-employed in a business that is a sole proprietorship. A sole proprietorship is defined as a business owned by one person. Under that definition, a corporation or limited liability could be such a business. For the first six months of assistance benefits, the actual activity hours are to be used to determine benefit assistance. Thereafter, the activity hours can be limited. The activity hours is determined dividing the gross monthly self-employment income by the current federal minimum hourly wage. The lesser of calculated activity hours or actual activity hours is used to determine the benefit.

Section 301 of the temporary and proposed rule, dealing with countable income, deletes the substitution of the current federal minimum wage times the number of activity hours being claimed when there is no countable income for three months.

The temporary and proposed rule rewrites section 303, which previously addressed the computation of non-farming self-employment income, and which now addresses the averaging of self-employment income. Under the rewritten section, the Department averages self-employment income which is considered annual support by the household even if the income is received for less than twelve months and if income from other sources is received. For seasonably self-employment income, the Department averages the income for only the part of the year the income is intended to cover.

Old section 303 is revised and designated as section 304, and old section 304 has been deleted. The result is to eliminate the distinction between computing farming and non-farming self-employment income. Self-employment income is computed by adding projected monthly income to capital gains and subtracting a deduction for expenses. Gone from the temporary and proposed rule are instructions on how to determine monthly earnings when tax returns are or are not available. A standard self-employment deduction of fifty percent of gross monthly self-employment income is used unless the applicant claims and proves that the actual allowable expenses exceed that standard deduction. Not allowed as expenses are: net losses from previous tax years; federal, state and local income taxes; money set aside for retirement; work-related personal expenses such as transportation to and from work; and depreciation.

SUMMARY

The Department's proposed rule changes appear to be authorized under section 56-202(b), Idaho Code.

cc: Department of Health and Welfare
Sherri Kovach & Genie Sue Weppner

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-0801

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2008.

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, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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

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

The Department is aligning the methodologies used to calculate income for self-employed individuals who apply for the Idaho Child Care Program (ICCP) with those used in other Department rules. By using the same methodologies the Department will: (1) simplify the process for determining income for self-employed individuals who are applying for assistance in one or more programs, and, (2) reduce the opportunity for errors that may occur when different methods are used to determine eligibility for these programs.

The qualifying activities for benefit assistance are being amended to define self-employment along with the limit of activity hours in certain situations as determined using self-employment income. Countable income is being amended to include self-employment. The methodology of how self-employment income is determined is being updated to meet current practice. The ICCP rules will no longer differentiate between farming and non-farming self-employment income when determining self-employment income for benefit assistance.

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

These rules confer a benefit and will simplify the processes for determining eligibility for assistance benefits.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change confers a benefit to an individual applying for program assistance.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this _____ day of _____, 2008.

Sherri Kovach
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THE FOLLOWING IS THE TEXT FOR DOCKET NO. 16-0612-0801

200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

To be eligible for child care benefits, a family must need child care because they are engaged in one (1) of the ~~following qualifying activities that qualifies them for child care benefits:~~ listed in Subsections 200.01 through 200.05 of this rule. ~~(4-2-08)~~(5-1-08)T

01. Employment. The parent is currently employed. (4-2-08)

02. Self-Employment. The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-1-08)T

a. For the first six (6) months of assistance benefits, actual activity hours are used to determine benefit assistance for a parent that is self-employed. (5-1-08)T

b. After receiving six (6) months of benefit assistance, the number of self-employment activity hours that will be used to calculate benefits can be limited for a parent who is self-employed. To calculate the activity hours allowed for ICCP benefit assistance, the gross monthly self-employment income is divided by the current federal minimum hourly wage to determine the number of self-employment activity hours allowed. The lesser of the calculated activity hours or actual activity hours will be used to determine the benefit assistance. (5-1-08)T

023. Training or Education. The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)

b. Persons with baccalaureate degrees or who are attending post-baccalaureate classes do not qualify for child care benefits. (4-2-08)

c. More than forty (40) months of post-secondary education has been used as a qualifying activity. (4-2-08)

034. Preventive Services. The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. (4-2-08)

045. Personal Responsibility Contract (PRC). The parent is completing Personal Responsibility Contract (PRC) activities negotiated between the Department and the parent as described in IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families (TAFI) in Idaho." (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

301. COUNTABLE INCOME.

All gross earned and unearned income is counted in determining eligibility and the child care benefit amount, unless specifically excluded under Section 302 of these rules. ~~If a self-employed individual has no countable income for a period of three (3) months, the Department will count the current federal minimum wage times the number of activity hours being claimed to determine child care benefits.~~ (4-2-08)(5-1-08)T

(BREAK IN CONTINUITY OF SECTIONS)

303. AVERAGING SELF-EMPLOYMENT INCOME.

01. Annual Self-Employment Income. When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (5-1-08)T

a. The income is received over a shorter period of time than twelve (12) months; and (5-1-08)T

b. The household receives income from other sources in addition to self-employment. (5-1-08)T

02. Seasonal Self-Employment Income. A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (5-1-08)T

303.4. COMPUTING NON-FARMING CALCULATION OF SELF-EMPLOYMENT INCOME.

~~Compute non-farming~~ The Department calculates self-employment income by adding ~~projected~~ monthly ~~earnings~~ income to ~~projected~~ capital gains and subtracting ~~the self-employment standard~~ a deduction for expenses as determined in Subsection 304.03 of this rule. (4-2-08)(5-1-08)T

01. Determine How Monthly Earnings Income is Determined. If no income fluctuations are expected, the average monthly ~~income~~ amount is projected for the certification period. If past ~~earnings are income~~ does not reflective of expected future ~~earnings~~ income, ~~make~~ a proportionate adjustment ~~is made~~ to the expected monthly ~~earnings~~. ~~Determine the monthly earnings by the using one (1) of the following:~~ income. (4-2-08)(5-1-08)T

a. ~~If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of self-employment.~~ (4-2-08)

b. ~~If no tax return is available, the self-employment income is averaged over the period of time the enterprise has been in operation.~~ (4-2-08)

02. Add Monthly Capital Gains Income. Capital gains include profit from the sale or transfer of capital assets used in self-employment. ~~The Department~~ ~~calculates~~ capital gains using the federal income tax method. ~~Determine~~ ~~if~~ the household expects to receive any capital gains income from self-employment assets during the certification period. ~~Add~~ this amount ~~is added~~ to the monthly ~~earnings~~ income as determined in Subsection 303.4.01 of ~~these~~ ~~this~~ rules to determine the gross monthly income. (4-2-08)(5-1-08)T

03. Subtract Non-Farming Self-Employment Standard Expense Deduction. ~~Subtract fifty percent (50%) of the gross monthly income as a self-employment standard deduction. This is the projected non-farming self-employment monthly income.~~ The Department uses the standard self-employment deduction in Subsection 304.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 304.03.b. of this rule. (4-2-08)(5-1-08)T

a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 303.01 and 303.02 of this rule; or (5-1-08)T

b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income: (5-1-08)T

~~304. COMPUTING FARMING SELF-EMPLOYMENT INCOME.~~

~~For farming self-employment, compute net income by subtracting allowable expenses from the gross income as follows in Subsections 304.01 through 304.04 of these rules. (4-2-08)~~

~~**01. Determine Monthly Earnings.** If no income fluctuations are expected, the average monthly amount is projected for the certification period. If past earnings are not reflective of expected future earnings, make a proportionate adjustment to the expected monthly earnings. Determine the monthly earnings by using one (1) of the following: (4-2-08)~~

~~**a.** If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of farming self-employment. (4-2-08)~~

~~**b.** If no tax return is available, the farming self-employment income is averaged over the period of time the enterprise has been in operation. (4-2-08)~~

~~**02. Add Monthly Capital Gains Income.** Capital gains include profit from the sale or transfer of capital assets used in self-employment. Calculate capital gains using the federal income tax method. Determine if the household expects to receive any capital gains income from farming self-employment assets during the certification period. Add this amount to the monthly earnings as determined in Subsection 304.01 of these rules to determine the gross monthly income. (4-2-08)~~

~~**03. Subtract Allowable Expenses.** Subtract any allowable expenses for farming self-employment, except those listed in Subsection 304.04 of these rules for expenses that are not allowed. This is the projected farming self-employment monthly income. (4-2-08)~~

~~**04. Costs Not Allowed for Farming Self-Employment Expenses.** The following items are not allowed as costs of doing business and may not be subtracted from the farming self-employment income. (4-2-08)~~

- ~~**a.i.** Net losses from previous certification periods tax years; (4-2-08)(5-1-08)T~~
- ~~**b.ii.** Federal, State, and local income taxes; (4-2-08)~~
- ~~**c.iii.** Money set aside for retirement; (4-2-08)~~
- ~~**d.iv.** Work-related personal expenses such as transportation to and from work; and (4-2-08)~~
- ~~**e.v.** Depreciation. (4-2-08)~~