FORM WIC 155
4/16

Idaho WIC Program
Fair Hearing Request

If the clinic takes any adverse action against you, you have the right to ask for an informal meeting or formal hearing. The adverse action may result in a claim against you for repayment of the cash value of improperly issued benefits or result in denial of participation or disqualification from the program.

You may wish to contact a local legal service office to help you decide if you should ask for an informal meeting or a hearing. You may be able to receive free legal aid. Ask your local WIC clinic for referral information or dial Idaho's CareLine 211 for assistance.

When possible, you are encouraged to request an informal meeting with the local agency coordinator and/or clinic supervisor. This meeting is to try and resolve your concerns by reviewing the facts, regulations, and circumstances of the action taken. If the action taken by the local agency was wrong, it will be corrected as a result of this meeting. If you are not satisfied with the result of the informal meeting, you may proceed with the fair hearing request. An informal meeting is optional.

If the meeting with the local agency does not resolve your concerns or if you would like to proceed with a formal hearing, you must ask for the hearing within 60 days of the date the action was taken against you. Hearing requests may be made verbally or in writing and delivered or sent to the local agency or State WIC Office.

Except for participants whose certification period has expired, participants who appeal the termination of benefits within 15 days of this action shall continue to receive program benefits until the hearing officer reaches a decision or the certification period expires, whichever occurs first. Applicants who are denied benefits at initial certification may appeal the denial, but shall not receive benefits while awaiting the appeal process.

Return the Fair Hearing Request to:

Mail: **Idaho WIC Program**
P.O. Box 83720
450 West State St., 1st Floor
Boise, Idaho 83720-0036

Fax: **(208) 332-7362**

You are encouraged to keep a copy of the Fair Hearing Request for your records.You may ask the local WIC agency to make a copy for you.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1)mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3)email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Fair Hearing Request

I disagree with the Idaho WIC Program's decision concerning my application/participation as described below.

Mark the action you disagree with:

- ❒ Repayment of cash value of improperly issued benefits
- ❒ Disqualification
- ❒ Denied participation
- ❒ Other (explain):

_____

_____

_____

_____

I understand that if my certification is current and this request is made within 15 days from the date the action in question is taken, I will continue to receive WIC benefits until the hearing officer reaches a decision or my certification period has expired, whichever occurs first.

Name	**Contact Phone Number**	
Street/Mailing Address	**City**	**Zip Code**
Signature	**Date**	

FOR OFFICE USE ONLY

Date Received in WIC	Date Received at DHW Legal	Hearing Request Number

WIC is an equal opportunity provider. For the full nondiscrimination statement and contact information to file a complaint, please visit the Idaho WIC website at www.wic.dhw.idaho.gov.

Programa WIC de Idaho
Solicitud para una Audiencia Justa

Si la clínica toma una acción adversa en su contra, usted tiene el derecho de pedir una junta informal o una audiencia formal. La acción adversa puede resultar en un reclamo en su contra por reembolso del valor en efectivo de beneficios emitidos incorrectamente o puede resultar en la negación o la descalificación de su participación en el Programa.

Usted tal vez quiera contactar a la oficina local de servicio legal para ayudarle a decidir si debe pedir una junta informal o una audiencia. Tal vez pueda recibir ayuda legal gratis. Pida información en la clínica de WIC local o marque el 211 de Idaho CareLine para obtener ayuda.

Cuando sea posible, se le recomienda que pida una junta informal con el coordinador de la agencia local o con el supervisor de la clínica. Esta junta es para tratar de resolver sus preocupaciones revisando los hechos, las regulaciones y las circunstancias de la acción tomada. Si la acción tomada por la agencia local fue incorrecta, ésta será corregida como resultado de esta junta. Si usted no está satisfecho con el resultado de la junta informal, tal vez quiera proceder solicitando una audiencia justa. La junta informal es opcional.

Si la junta con la agencia local no resuelve sus preocupaciones o si le gustaría proceder con una audiencia formal, usted debe solicitar la audiencia dentro de 60 días de la fecha de la acción adversa en su contra. Las solicitudes para las audiencias pueden hacerse verbalmente o por escrito y son entregadas o enviadas a la agencia local o a la oficina estatal de WIC.

Excepto por los participantes cuyo periodo de certificación ha expirado, los participantes que apelan la terminación de beneficios dentro de 15 días de esta acción continuarán recibiendo los beneficios del programa hasta que el oficial de audiencias llegue a una decisión o el período de certificación expire, cualquiera que ocurra primero. Los solicitantes con beneficios negados al inicio de la certificación pueden apelar la negación, pero no recibirán beneficios mientras esperan el proceso de apelación.

Regrese la Solicitud para una Audiencia Justa a:

Correo: **Idaho WIC Program**
P.O. Box 83720
450 West State, 1st Floor
Boise, Idaho 83720-0036

Fax: **(208) 332-7362**

Se le recomienda que mantenga una copia para sus archivos de la Solicitud para una Audiencia Justa. Usted le puede pedir a la agencia local de WIC que le haga una copia.

El Departamento de Agricultura de los Estados Unidos (por sus siglas en inglés “USDA”) prohíbe la discriminación contra sus clientes, empleados y solicitantes de empleo por raza, color, origen nacional, edad, discapacidad, sexo, identidad de género, religión, represalias y, según corresponda, convicciones políticas, estado civil, estado familiar or paternal, orientación sexual, o si los ingresos de una persona provienen en su totalidad o en parte de un programa de asistencia pública, o información genética protegida de empleo o de cualquier programa o actividad realizada o financiada por el Departamento. (No todos los criterios prohibidos se aplicarán a todos los programas y/o actividades laborales).

Si desea presentar una queja por discriminación del programa de Derechos Civiles, complete el USDA Program Discrimination Complaint Form (formulario de quejas por discriminación del programa del USDA), que puede encontrar en internet en http://www.ascr.usda.gov/complaint_filing_cust.html, o en cualquier oficina del USDA, o llame al (866) 632-9992 para solicitar el formulario. También puede escribir una carta con toda la información solicitada en el formulario. Envíenos su formulario de queja completo o carta por correo postal a U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, por fax al (202) 690-7442 o por correo electrónico a program.intake@usda.gov.

Las personas sordas, con dificultades auditivas, o con discapacidad del habla pueden contactar al USDA por medio del Federal Relay Service (servicio federal de transmisión) al (800) 877-8339 o (800) 845-6136 (en español).

El USDA es un proveedor y empleador que ofrece igualdad de oportunidades.

Solicitud para una Audiencia Justa

Yo no estoy de acuerdo con la decisión del Programa WIC de Idaho con respecto a mi solicitud/participación como se describe abajo:

Marque la acción con la cual no está de acuerdo:

- ❒ Reembolso del valor en efectivo de beneficios emitidos incorrectamente
- ❒ Descalificación
- ❒ Participación negada
- ❒ Otro (explique):

_____

_____

_____

_____

Entiendo que si mi certificación está al día y esta solicitud es hecha dentro de 15 días de cuando la acción en cuestión fue tomada, continuaré recibiendo beneficios de WIC hasta que el oficial de audiencias llegue a una decisión o hasta cuando mi período de certificación expire, cualquiera que ocurra primero.

Nombre	**Número de Teléfono de Contacto**	
Calle/Dirección de Correo	**Ciudad**	**Código Postal**
Firma	**Fecha**	

.....

PARA EL USO DE OFICINA SOLAMENTE

Fecha recibida en WIC	**Fecha Recibida en DHW Legal**	**Número de la Solicitud de la Audiencia**

USDA es un proveedor que ofrece igual dad de oportunidades. Con respecto a la declaración para no ser discriminado y la información de contacto para presenter una queja, visite la página de web de Idaho WIC a www.wic.dhw.idaho.gov.

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IDAPA 16
TITLE 05
CHAPTER 03

16.05.03 - RULES GOVERNING CONTESTED CASE PROCEEDINGS AND DECLARATORY RULINGS

000. LEGAL AUTHORITY.
The Idaho Legislature has granted the Director of the Department of Health and Welfare and the Board of Health and Welfare the power and authority to conduct contested case proceedings and issue declaratory rulings, and to adopt rules governing such proceedings under Sections 16-107, 56-133, 56-135, 56-202, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code. (5-8-09)

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (5-8-09)

02. Scope. These rules establish standards for petitions for rulemaking and declaratory rulings, and the conduct of contested cases. (5-8-09)

002. WRITTEN INTERPRETATIONS.
There are none for this chapter of rules. (3-30-01)

003. ADMINISTRATIVE APPEALS.
All contested cases are governed by the provisions of this chapter. The Board of Health and Welfare and the Director of the Department of Health and Welfare find that the provisions of IDAPA 04.11.01.000, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable for contested cases involving the programs administered by the Department, because of the specific requirements of federal and state law regarding hearing processes, and the complexity of the rules at IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-11-06)

004. INCORPORATION BY REFERENCE.
There are none in this chapter of rules. (3-30-01)

005. ADMINISTRATIVE PROCEDURES SECTION.
Petitions for adoption of rules, petitions for declaratory rulings, and appeals must be filed with: Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036. Phone: (208) 334-5564. FAX: 334-6558. (4-11-06)

006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-11-06)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-11-06)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-11-06)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-11-06)

05. Internet Website. The Department's internet website at http://www.healthandwelfare.idaho.gov/. (4-11-06)

007. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.
Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-11-06)

008. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. Administrative Review. An informal review by a Division Administrator or designee, to determine whether a Department decision is correct. (5-8-09)

02. Appellant. A person or entity who files an appeal of Department action or inaction. (3-30-01)

03. Board. The Idaho Board of Health and Welfare. (3-30-01)

04. Department. The Idaho Department of Health and Welfare. (3-30-01)

05. Director. The Director of the Department of Health and Welfare. (3-30-01)

06. Hearing Officer. The person designated to preside over a particular hearing and any related proceedings. (3-30-01)

07. IPV. Intentional program violation. (3-30-01)

08. Intervenor. Any person, other than an appellant or the Department, who requests to be admitted as a party in an appeal. (3-30-01)

09. Party. An appellant, the Department and an intervenor, if intervention is permitted. (3-30-01)

011. -- 039. (RESERVED)

040. PETITION FOR ADOPTION OF RULES.
Under Section 67-5230, Idaho Code, any person may file a written petition with the Administrative Procedures Section requesting the promulgation, amendment, or repeal of a rule. The petition must include a name, address and phone number to which the Department may respond; list the rule in question and explain the reasons for the petition; and include the suggested language of the rule. The Director will initiate rulemaking proceedings or deny the petition in writing within twenty-eight (28) days. (4-11-06)

041. -- 049. (RESERVED)

050. PETITION FOR DECLARATORY RULING.
Under Section 67-5232, Idaho Code, any person may file a written petition to the Director through the Administrative Procedures Section for a declaratory ruling as to the applicability of any statute or rule of the Department to an actual set of facts involving that person. (4-11-06)

051. CONTENTS OF PETITION FOR DECLARATORY RULING.
A petition for a declaratory ruling must identify that it is a request for a declaratory ruling under this section; the specific statute, or rule with respect to which the declaratory ruling is requested; a complete description of the situation for which the declaratory ruling is requested; and the specific ruling requested. The petition must include the date of the petition, the name, address and phone number of the petitioner and whether the petition is made on behalf of a corporation or organization. The petition must identify the manner by which the statute or rule interferes with, impairs, or threatens to interfere with or impair the legal rights, duties, licenses, immunities, interests or privileges of the petitioner. (4-11-06)

052. DISPOSITION OF PETITION FOR DECLARATORY RULING.
The Director will issue a final declaratory ruling in writing within seventy (70) days after receipt of the petition or within such additional time as may be required. The Director may decline to issue a declaratory ruling in the

following circumstances: (4-11-06)

01. **Incomplete**. When a petition fails to meet the requirements set forth in Section 051 of these rules; (3-30-01)

02. **Contested Case**. When the issue set forth in the petition would be more properly addressed as a contested case, such as where there is a reasonable dispute as to the relevant facts, or where witness credibility is an issue; (3-30-01)

03. **No Legal Interest**. When the petition fails to state a sufficient or cognizable legal interest to confer standing; (3-30-01)

04. **Others Affected**. When the issue presented would substantially affect the legal rights, license, privileges, immunities, or interests of parties other than petitioners; or (3-30-01)

05. **Beyond Authority**. When the ruling requested is beyond the authority of the Department. (3-30-01)

053. -- 099. (RESERVED)

100. DEPARTMENT RESPONSIBILITY.
When a decision is appealable, the Department will advise the individual or provider in writing of the right and method to appeal and the right to be represented. (4-11-06)

101. FILING OF APPEALS.
Appeals must be filed in writing and state the appellant's name, address and phone number, and the remedy requested, except that appeals of action relating to Food Stamps may be made verbally to Department staff by an individual or representative. Appeals should be accompanied by a copy of the decision that is the subject of the appeal and state the reason for disagreement with the Department's action. Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision have twenty-eight (28) days from the date the decision is mailed to file an appeal. An appeal is filed when it is received by the Department or postmarked within the time limits set forth in these rules. (5-8-09)

102. NOTICE OF HEARING.
All parties in an appeal will be notified of a hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The hearing officer may provide a shorter advance notice upon request of a party or for good cause. The notice will identify the time, place and nature of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of any statutes and rules involved; the issues involved; and the right to be represented. The notice must identify how and when documents for the hearing will be provided to all parties. (4-11-06)

103. PREHEARING CONFERENCE.
The hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference to formulate or simplify the issues; obtain admissions or stipulations of fact and documents; identify whether there is any additional information that had not been presented to the Department with good cause; arrange for exchange of proposed exhibits or prepared expert testimony; limit the number of witnesses; determine the procedure at the hearing; and to determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (3-30-01)

104. SUBPOENAS.
At the request of a party, the hearing officer may issue subpoenas for witnesses or documents, consistent with Sections 120 and 134 of these rules. (3-30-01)

105. DISPOSITION OF CASE WITHOUT A HEARING.
Any contested case may be resolved without a hearing on the merits of the appeal by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction. The hearing officer must dismiss an appeal that is not filed within the time limits set forth in these rules. (4-11-06)

106. DEFAULT.
If a party fails to appear at a scheduled hearing or at any stage of a contested case, the hearing officer must enter a proposed default order against that party. The default order must be set aside if, within fourteen (14) days of the date of mailing, that party submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. (4-11-06)

107. INTERVENTION.
Persons other than the original parties to an appeal who are directly and substantially affected by the proceeding may participate if they first secure an order from the hearing officer granting leave to intervene. The granting of leave to intervene is not to be construed as a finding or determination that the intervenor is or may be a party aggrieved by any ruling, order or decision of the Department for purposes of judicial review. (4-11-06)

108. CONSOLIDATED HEARING.
When there are multiple appeals or a group appeal involving the same change in law, rules, or policy, the hearing officer will hold a consolidated hearing. (5-8-09)

109. -- 119. (RESERVED)

120. DISCOVERY.
Except for hearings involving Section 56-1005(5), Idaho Code, prehearing discovery is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The hearing officer may order production of this information if a party refuses to comply after receiving a written request. The hearing officer will issue such other orders as are needed for the orderly conduct of the proceeding. Nothing in Section 120 limits the authority of the Director provided in Section 56-227C, Idaho Code. (4-11-06)

121. BRIEFING SCHEDULE.
A hearing officer may require briefs to be filed by the parties, and establish a reasonable briefing schedule. (3-30-01)

122. FILING OF DOCUMENTS IN AN APPEAL.
All documents intended to be used as exhibits must be filed with the hearing officer. Such documents will be provided to every party at the time they are filed with the hearing officer, in person or by first class mail. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States or Statehouse mail. A certificate showing delivery to all parties will accompany all documents when they are filed with the hearing officer. (4-11-06)

123. REPRESENTATION.
Any party in a contested case proceeding may be represented by legal counsel, at the party's own expense. An individual in an appeal involving benefits may also be represented by a non-attorney. (3-30-01)

124. REPRESENTATION OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.
Unless an individual, authorized representative or attorney provides a written declaration to the contrary, eligible individuals with developmental disabilities or mental illness are deemed to be represented by the state Protection and Advocacy System established under 42 USC 6041, et seq., and 42 USC 10801 et seq., and designated by the Governor. The protection and advocacy system has access to records of such individuals maintained by any program or institution of the Department if the individual is unable to authorize the system to have such access, or does not have a legal guardian, conservator or other legal representative. Service of documents will be made on the protection and advocacy system and the individual. Unless the protection and advocacy system provides written notification to the Department that it will not be representing the individual, the system is an authorized representative. (4-11-06)

125. INTERPRETERS.
If necessary, an interpreter will be provided by the Department. (4-11-06)

126. -- 129. (RESERVED)

130. OPEN HEARINGS.
All contested case hearings are open to the public, unless ordered closed in the discretion of the hearing officer due to

the sensitive nature of the hearing. The hearing officer can order that individuals be identified by initials or an alias if necessary to protect their privacy. At the discretion of the hearing officer, witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all parties. (5-8-09)

131. AUTHORITY OF HEARING OFFICER.
The hearing officer will consider only information that was available to the Department at the time the decision was made. If appellant shows that there is additional relevant information that was not presented to the Department with good cause, the hearing officer will remand the case to the Department for consideration. No hearing officer has the jurisdiction or authority to invalidate any federal or state statute, rule, regulation, or court order. The hearing officer must defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion. The hearing officer will not retain jurisdiction on any matter after it has been remanded to the Department. (4-11-06)

132. BURDEN OF PROOF -- INDIVIDUAL BENEFIT CASES.
The Department has the burden of proof if the action being appealed is to limit, reduce or terminate services or benefits; establish an overpayment or disqualification; revoke or limit a license; or to contest a tobacco violation under Sections 39-5705 and 39-5708, Idaho Code. In a child support matter, the Department must first establish that arrearages are sufficient for child support enforcement action. The appellant has the burden of proof on all other issues, including establishing eligibility for a program, service or license; seeking an exemption required due to criminal history or abuse registry information; or seeking to avoid license suspension, asset seizure, or other enforcement actions for failure to pay child support. (5-8-09)

133. BURDEN OF PROOF -- PROVIDER CASES.
The Department has the burden of proof if the action being appealed is to revoke or limit a license, certification, or provider agreement; or to impose a penalty. The appellant has the burden of proof on all other issues, including establishing entitlement to payment. (3-30-01)

134. EVIDENCE.
Under Section 67-5251, Idaho Code, the hearing is informal and technical rules of evidence do not apply, except that irrelevant, immaterial, incompetent, unduly repetitious evidence, evidence excludable on constitutional or statutory grounds, or evidence protected by legal privilege is excluded. Hearsay evidence will be received if it is relevant to a matter in dispute and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs, or corroborates competent evidence. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Unless otherwise stated in statute, rule, or regulation, the evidentiary standard is proof by a preponderance of the evidence. (4-11-06)

135. DISCRETIONARY JUDICIAL NOTICE.
Notice may be taken of judicially cognizable facts by the hearing officer or authority on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties will be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and the parties will be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (4-11-06)

136. MANDATORY JUDICIAL NOTICE.
The hearing officer will take judicial notice, on its own motion or on the motion of any party, of the following admissible, valid and enforceable materials: Rules of the Department and other state agencies; Federal regulations; State plans of the Department; The Constitutions and statutes of the United States and Idaho; Public records; and Such other materials that a court of law must judicially notice. (4-11-06)

137. HEARING RECORD.
The hearing officer must arrange for a record to be made of a hearing. The hearing must be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record must be transcribed at the expense of the party requesting a transcript and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. The Department must maintain the complete record of each contested case for a period of not less than six

(6) months after the expiration of the last date for judicial review, unless otherwise provided by law. (4-11-06)

138. DECISION AND ORDER.
A preliminary order must be issued by the hearing officer not later than thirty (30) days after the case is submitted for decision. The order must include specific findings on all major facts at issue; a reasoned statement in support of the decision; all other findings and recommendations of the hearing officer; a preliminary decision affirming, reversing or modifying the action or decision of the Department, or remanding the case for further proceedings; and the procedures and time limits for filing requests for review of the order. Unless otherwise provided by a statute governing a particular program, motions for reconsideration of a preliminary order will not be accepted. (4-11-06)

139. -- 149. (RESERVED)

150. REVIEW OF PRELIMINARY ORDERS BY DEPARTMENT.
In cases under the jurisdiction of the Department, either party may file a request for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request must identify all legal and factual bases of disagreement with the preliminary order. The Director or designee must allow for briefing by the parties and determines whether oral argument will be allowed. The Director or designee determines whether a transcript of the hearing is needed and if so, one will be provided by the party who requests review of the preliminary order. The Director or designee must exercise all of the decision-making power he would have had if he had presided over the hearing. (4-11-06)

151. PETITION FOR REVIEW BY BOARD OF HEALTH AND WELFARE.
In cases under the jurisdiction of the Board, either party may file a petition for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request must identify all legal and factual bases of disagreement with the preliminary order. The Administrative Procedures Section will establish a schedule for the submission of briefs and if allowed, oral argument. The Board chair or designee will determine whether a transcript of the hearing is needed and, if so, one will be provided by the party who requests review of the preliminary order. Board members will exercise all of the decision-making power they would have had if they had presided over the hearing. (5-8-09)

152. FINAL ORDER.
The Board, Director or designee may affirm, modify, or reverse the order, or remand the matter to the hearing officer for further proceedings. The decision informs the parties of the procedure and time limits for filing appeals with the district court. Motions for reconsideration of a final order will not be accepted. (4-11-06)

153. SERVICE OF PRELIMINARY AND FINAL ORDERS.
Orders will be deemed to have been served when copies are mailed to all parties of record or their attorneys. (4-11-06)

154. MAINTENANCE OF ORDERS.
All final orders of the Board or the Director will be maintained by the Administrative Procedures Section and made available for public inspection for at least six (6) months, or until all appeals are concluded, whichever is later. (4-11-06)

155. EFFECT OF PETITION FOR JUDICIAL REVIEW.
The filing of a petition for judicial review will not stay compliance with a final order or suspend the effectiveness of the order, unless otherwise ordered or mandated by law. (4-11-06)

156. -- 198. (RESERVED)

199. SPECIFIC CONTESTED CASE PROVISIONS.
The following sections set forth special requirements of various Department programs, which supersede the general provisions of these rules insofar as they are different or inconsistent. Sections 200 through 254 pertain to the programs in the Division of Welfare; Sections 300 and 301 pertain to the Division of Medicaid; and Sections 400 through 402 pertain to the Division of Health. (3-30-01)

200. DIVISION OF WELFARE: APPEALS.

The provisions of this section of rules govern the conduct of individual benefit hearings to determine eligibility for benefits or services in the Division of Welfare, including IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho," IDAPA 16.03.04, "Rules Governing the Food Stamp Program in Idaho," IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program (ICCP)," IDAPA 16.04.14, "Rules Governing the Low Income Energy Assistance Program," IDAPA 16.04.02, "Idaho Telecommunication Service Assistance Program Rules," IDAPA 16.04.12, "Rules Governing the Individual and Family Grant Program," and IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (5-8-09)

201. DIVISION OF WELFARE: TIME FOR FILING APPEAL.
A decision issued by the Department in a Division of Welfare program will be final and effective unless an individual or representative appeals within thirty (30) days from the date the decision was mailed, except that a recipient or applicant for Food Stamps has ninety (90) days to appeal. An individual or representative may also appeal when the Department delays in making an eligibility decision or making payment beyond the limits specified in the particular program within thirty (30) days after the action would have been taken if the Department had acted in a timely manner. (5-8-09)

202. DIVISION OF WELFARE: INFORMAL CONFERENCE.
An appellant or representative has the right to request an informal conference with the Department or Community Action Agency before the hearing date. This conference may be used to resolve the issue informally or to provide the appellant with information about the hearing or actions. The conference will not affect the appellant's right to a hearing or the time limits for the hearing. After the conference, the hearing will be held unless the appellant withdraws the appeal, or the Department withdraws the action contested by the appellant. (5-8-09)

203. DIVISION OF WELFARE: WITHDRAWAL OF AN APPEAL.
An appellant or representative may withdraw an appeal upon written request to the hearing officer. (5-8-09)

204. DIVISION OF WELFARE: TIME LIMITS FOR COMPLETING HEARINGS.
The Department must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance, the hearing will be held within thirty (30) days from the date the hearing request is received. The Department will expedite hearing requests from appellants such as migrant farm workers who are planning to move before the hearing decision would normally be reached. (5-8-09)

205. DIVISION OF WELFARE: APPEAL OF AUTOMATIC ADJUSTMENTS.
An appeal will be dismissed if the hearing officer determines that the sole issue is an automatic grant adjustment, change in rule that affects benefit amount or eligibility, or reduction of Medicaid services under state or federal law. (5-8-09)

206. (RESERVED)

207. DIVISION OF WELFARE: POSTPONEMENT OF FOOD STAMP HEARINGS.
An appellant may request, and be granted a postponement of a hearing, not to exceed thirty (30) days. The time limit for the Department's response will be extended for as many days as the hearing is postponed. (5-8-09)

208. -- 249. (RESERVED)

250. DIVISION OF WELFARE: FOOD STAMPS DISQUALIFICATION HEARINGS.
A disqualification hearing will be scheduled when the Department has evidence that an individual has allegedly committed one (1) or more acts of intentional program violations (IPV). (5-8-09)

251. DIVISION OF WELFARE: COMBINING DISQUALIFICATION HEARING AND BENEFIT HEARING.
The hearing officer must consolidate a hearing regarding benefits or overpayment and a disqualification hearing if the issues are the same or related. The appellant must be notified that the hearings will be combined. (5-8-09)

252. DIVISION OF WELFARE: RIGHT NOT TO TESTIFY.

The hearing officer must advise the appellant that he may refuse to answer questions during a disqualification hearing. (5-8-09)

253. DIVISION OF WELFARE: FAILURE TO APPEAR.
If an appellant or representative fails to appear at a disqualification hearing or cannot be located, the hearing will be conducted in his absence. The Department must present proof that advance notice of the hearing was mailed to the appellant's last known address. The hearing officer must consider the evidence and determine if an IPV occurred based solely on the information provided by the Department. The appellant has ten (10) days from the date of the scheduled hearing to show good cause for failure to appear. If an IPV had been established, but the hearing officer determines the appellant had good cause for not appearing, the previous decision will be void and a new hearing will be conducted. The previous hearing officer may conduct the new hearing. (5-8-09)

254. DIVISION OF WELFARE: STANDARD FOR DETERMINING INTENTIONAL PROGRAM VIOLATIONS.
The determination that an intentional program violation has been committed must be established by clear and convincing evidence that the appellant committed or intended to commit an IPV. (5-8-09)

255. -- 297. (RESERVED)

298. DIVISION OF WELFARE: BUREAU OF CHILD SUPPORT.
A notice of license suspension becomes final and effective unless an individual or a representative files an appeal within twenty-one (21) days from the date the decision is mailed. (5-8-09)

299. (RESERVED)

300. DIVISIONS OF MEDICAID AND LICENSING AND CERTIFICATION: REQUEST FOR ADMINISTRATIVE REVIEW.
An action relating to licensure or certification, billing or reimbursement is final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must be signed by the licensed administrator of the facility or by the provider, identify the challenged decision, and state specifically the grounds for its contention that the decision was erroneous. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within twenty-eight (28) days after the request for the administrative review. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. The Department will provide a written decision to the facility or provider. (5-8-09)

301. DIVISIONS OF MEDICAID AND LICENSING AND CERTIFICATION: SCOPE OF HEARING.
If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review will be admissible in the appeal hearing. (4-11-06)

302. -- 399. (RESERVED)

400. DIVISION OF HEALTH: LABORATORIES.
A notice of grounds for denial, suspension, revocation or renewal becomes final and effective unless the applicant or responsible party files a written appeal by registered or certified mail within fourteen (14) days of receipt of the notice. A hearing will be held not more than twenty-eight (28) days from receipt of the appeal. The applicant or responsible person will receive at least fourteen (14) days of notice of the hearing date. If the Department finds that the public health, safety or welfare imperatively requires emergency action, and incorporates the findings to that effect in its notice of denial, suspension or revocation, summary suspension of the approval may be ordered. (4-11-06)

401. DIVISION OF HEALTH: REPORTABLE DISEASES.
An order for isolation or quarantine is a final agency action as set forth in Section 56-1003(7), Idaho Code. Other orders or restrictions as specified in IDAPA 16.02.10, "Idaho Reportable Diseases," become final and effective unless an appeal is filed within five (5) working days after the effective date of the order or restriction. (5-8-09)

01. Conduct of Hearing. The Department may take whatever precautions and make whatever

arrangements are necessary for the conduct of such hearing to insure that the health of participants and the public is not jeopardized. (3-30-01)

02. **Review**. Any person directly affected by an order or restriction may file exceptions to the Director's determination, which will be reviewed by the Board. The order or restriction remains effective unless rescinded by the Board. (4-11-06)

402. DIVISION OF HEALTH: FOOD ESTABLISHMENTS.
Appeal procedures will be as provided under IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," Section 861. (5-8-09)

403. -- 499. (RESERVED)

500. DIVISION OF FAMILY AND COMMUNITY SERVICES: CHILD PROTECTION CENTRAL REGISTRY ADMINISTRATIVE REVIEW.
A substantiated incident of child abuse, neglect, or abandonment will automatically become effective and be placed on the Child Protection Central Registry unless the individual identified in the notification files a request for an administrative review within twenty-eight (28) days from the date on the notification. The request for an administrative review must be mailed to the Family and Community Services (FACS) Division Administrator at the address listed in Subsection 006.02 of these rules. (5-8-09)

01. **Content of Request**. The request for an administrative review must identify the notification being protested and explain the reasons for disagreement. Additional information may be provided for the Administrator's consideration. (5-8-09)

02. **Administrative Review**. The FACS Division Administrator will consider all available information and determine whether the incident was erroneously determined to be "substantiated." The Administrator will furnish a written decision to the individual. (5-8-09)

501. DIVISION OF FAMILY AND COMMUNITY SERVICES: INTENSIVE BEHAVIORAL INTERVENTION (IBI) ADMINISTRATIVE REVIEW.

01. **Request for Administrative Review**. An action relating to certification, billing, or reimbursement is final and effective unless the provider requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must be signed by the provider, identify the challenged decision, and state specifically the grounds for its contention that the decision was erroneous. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within twenty-eight (28) days after the request for the administrative review. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. The Department will provide a written decision to the facility or provider. (5-8-09)

02. **Scope of Appeal Hearing**. If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review will be admissible in the appeal hearing. (5-8-09)

502. DIVISION OF FAMILY AND COMMUNITY SERVICES: INFANT TODDLER PROGRAM - INDIVIDUAL CHILD COMPLAINTS.

01. **Individual Child Complaints**. Parents or providers may request a hearing if they disagree with decisions regarding the identification, evaluation, or placement of a child, or, with the provision of appropriate early intervention services. A request must be filed with the Administrative Procedures Section identified in Section 005 of these rules, within twenty-eight (28) days from the date the decision is issued. The request for a hearing must identify: (5-8-09)

a. The child's name, home address, and the early intervention program serving the child; (5-8-09)

b. A statement identifying the facts and the reason for disagreement with the decision; (5-8-09)

c. The name of the provider who is serving the child; (5-8-09)

d. A proposed resolution; and (5-8-09)

e. A dated signature of the person who is submitting the request. (5-8-09)

02. Mediation. The Department must offer mediation services at Department expense, which must be held within thirty (30) days after the request for a hearing. A qualified and impartial mediator who is trained in effective mediation techniques will meet at a location convenient to both parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere. (5-8-09)

a. The parties must sign a confidentiality agreement before these discussions. Information discussed in the mediation cannot be used in any subsequent proceeding. (5-8-09)

b. If there is a resolution, both parties must sign a mediation agreement, which is enforceable in state or federal court. (5-8-09)

03. Due Process Hearings. The hearing must be held and a written decision mailed within thirty (30) days from the receipt of the request for a hearing, whether or not mediation occurs. The hearing officer may bar any party from introducing a relevant evaluation or recommendation that has not been disclosed at least five (5) calendar days before the hearing, unless the other party consents. (5-8-09)

a. Current Services. Appropriate early intervention services that are being provided at the time of the decision will continue unless the parties agree otherwise. (5-8-09)

b. Initial Application. If the decision involves an application for initial services, any services that are not in dispute must be provided. (5-8-09)

503. DIVISION OF FAMILY AND COMMUNITY SERVICES: INFANT TODDLER PROGRAM - ADMINISTRATIVE COMPLAINTS.

01. Filing of Complaint. An individual or organization, including those from another State, may file a written, signed complaint against any public or private service provider, alleging a violation of the Part C program and regulations at 34 CFR Part 303. The complaint must identify what requirement has been violated and the facts upon which the complaint is based. Complaints can include an allegation that a provider failed to implement the decision after a hearing. The complaint must be filed with the Administrative Procedures Section identified in Section 005 of these rules within one (1) year of the alleged violation, except in the following circumstances: (5-8-09)

a. If there is a continuing violation for that child or other children; or (5-8-09)

b. If the complaint requests reimbursement or corrective action for a violation that occurred not more than three (3) years prior to the date the complaint is received by the public agency. (5-8-09)

02. Investigation and Decision. Upon receipt, the Department has sixty (60) days, unless exceptional circumstances exist, to: (5-8-09)

a. Investigate the complaint, including conducting an independent, on-site investigation if necessary; (5-8-09)

b. Receive additional information about the complaint; (5-8-09)

c. Make an independent determination whether a violation occurred; (5-8-09)

d. Issue a written decision with findings, conclusions, and an explanation for the decision. (5-8-09)

03. Resolution. If the Department concludes that appropriate services were or are not being provided,

the decision must address remedial action including, if appropriate, the award of monetary reimbursement or corrective action appropriate to the needs of the child and family, technical assistance, and negotiation. The Department must also address appropriate future services for all infants and toddlers with disabilities and their families. (5-8-09)

04. **Extent of Review**. No issue that is being addressed in an active hearing process can be dealt with in an administrative complaint until the conclusion of the hearing. Any issue that is not part of the hearing must be resolved within the sixty (60) day review time. Issues that have already been decided in the hearing are final and binding on the complainant. (5-8-09)

504. -- 999. (RESERVED)

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