

Dear Senators MARTIN, Riggs, Stennett, and
Representatives WOOD, Vander Woude, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Health and Welfare:

IDAPA 16.04.14 - Low-Income Home Energy Assistance Program (LIHEAP) (ZBR Chapter
Rewrite) - Proposed Rule (Docket No. 16-0414-2201).

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 08/29/2022. 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 09/26/2022.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

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

FROM: Principal Legislative Drafting Attorney - Elizabeth Bowen

DATE: August 11, 2022

SUBJECT: Department of Health and Welfare

IDAPA 16.04.14 - Low-Income Home Energy Assistance Program (LIHEAP) (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 16-0414-2201)

Summary and Stated Reasons for the Rule

The purpose of this rule is to rewrite a chapter of rules to simplify and streamline the language. The rules concern the Low-Income Home Energy Assistance Program.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted, because the content of the rules is established by a federal program. There is no anticipated negative fiscal impact on the state general fund.

Statutory Authority

This rulemaking appears to be authorized pursuant to Section 56-202, Idaho Code.

cc: Department of Health and Welfare
Frank Powell and Trinette Middlebrook

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.04.14 – LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIEAP)
DOCKET NO. 16-0414-2201 (ZBR CHAPTER REWRITE)
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 56-202, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Virtual Public Hearing
Thursday, August 11, 2022 11:00 a.m. - 1:00 p.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=mc0cc1f9f9ab4ce65f56d474de7b287bf
WebEx Call-in: Dial in: 1-415-527-5035 United States
Meeting number (access code): 2761 050 6261
Meeting password: wAKNqJPd837 (92567573 from phones and video systems)

Virtual Public Hearing
Tuesday, August 23, 2022 8:30 a.m. - 10:00 a.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=m56860ec779199284ec7fb5e0f194665d
WebEx Call-in: Dial in: 1-415-527-5035 United States
Meeting number (access code): 2760 764 9348
Meeting password: juScf6YMg34 (58723696 from phones and video systems)

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

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

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this chapter of rules is being rewritten. The intent is to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. These rule changes represent a comprehensive review and revision of this chapter, in collaboration with the public, to streamline and simplify this rule language.

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

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

This rulemaking is not anticipated to have any fiscal impact on the State General Fund, or any other known funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2)(b), Idaho Code, negotiated rulemaking was not conducted as it was deemed not feasible as the content of this chapter is established by a federal program.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lisa Johnson at (208) 334-5739.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2022.

DATED this 30th day of June, 2022.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5500
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0414-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

16.04.14 – LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

000. LEGAL AUTHORITY.

This program is authorized by the Low-Income Home Energy Assistance Act of 1981, 42 U.S.C Sections 8621 to 8629. The Department has rulemaking authority under Section 56-202 Idaho Code. ()

001. SCOPE, AND LIMITATIONS.

01. Scope. The intent of the program is to provide assistance to eligible low income households, particularly those with the lowest incomes, that pay the highest proportion of their income for home energy needs. ()

02. Program Limitation. This federally funded program does not entitle any household to a certain amount or form of assistance. An eligible participant household will receive one (1) benefit payment from the standard program funding each program year. ()

002. – 009. (RESERVED)

010. DEFINITIONS.

For purposes of this chapter of rules, the following terms apply. ()

01. Crisis Assistance. Energy assistance provided to an eligible participant household to reduce or eliminate an energy related health threatening situation to the household. ()

02. Department. The Department of Health and Welfare or its designee. ()

03. Federal Poverty Guidelines (FPG). The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS) -- see website: <http://aspe.hhs.gov/poverty/>. ()

04. Fraud. A deliberate attempt to conceal or misrepresent pertinent information which could affect eligibility or grant amounts. ()

05. Head of Participant Household. The person designated by the household members to receive energy assistance benefit on behalf of the household and in whose favor the energy assistance warrant is written. ()

06. Income. The gross amount of moneys received by the participant household from all sources. ()

07. Participant. An individual or group of individuals who has applied for the Low-Income Home Energy Assistance Program from the state of Idaho. ()

08. Participant Household. A participant household is one (1) of the following: ()

a. An individual who lives alone; or ()

b. A group of individuals who are living together as one (1) economic unit where residential energy is customarily purchased in common or they make undesignated payments for energy in the form of rent. ()

09. Primary Fuel. The type of fuel declared by the participant household to be the major source of their home heating. ()

10. Undocumented Resident. Individuals who enter the United States illegally and who have not obtained legal resident status. ()

11. Vendor. A utility company or other provider of fuel utilized for home heating. ()

011. -- 099. (RESERVED)

100. PARTICIPANT CASE RECORD.

The participant case record is the documentary basis justifying the expenditure of LIHEAP funds. All material pertinent to a participant household will be retained for a permanent record. Eligibility determinations are supported

by information in the permanent record showing that each eligibility requirement is met, or that one (1) or more eligibility requirements are not met. ()

101. ELIGIBLE ACTIVITIES.

Funds made available through the LIHEAP grant will be used as follows: ()

01. Home Utility and Bulk Fuel Costs. These costs include those incurred by the eligible participant household for electricity, natural gas and bulk fuel for home energy needs, but does not include costs incurred for telephone, water, trash or sewer. ()

02. Governor Declared Emergency or Disaster. A portion of the LIHEAP grant funds may be used for home heating supply shortages experienced by the participant household or a weather-related emergency which threatens the health or lives of an area's inhabitants such that the Governor declares a state of emergency. ()

03. Catastrophic Illness Costs. Households with income exceeding eligibility guidelines may be eligible due to catastrophic illness. The household's unreimbursed medical expenses from the previous twelve (12) months are subtracted from the household's gross income for the same period. If the household then meets income guidelines, the Department makes a final eligibility determination. ()

102. PARTICIPANT RIGHTS.

The Department must inform participants of the following rights during the application and eligibility determination process: ()

01. Right to Apply. Any participant household wishing to apply will be given the opportunity, without delay, to apply for LIHEAP benefits. ()

02. Right to a Hearing. Rules governing hearing rights are contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." ()

03. Civil Rights. The rights of participant households must be respected under the U.S. and Idaho Constitutions, the Social Security Act, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant provisions of federal and state law, including the avoidance of practices which violate a person's privacy or subjection to harassment. ()

103. PARTICIPANT RESPONSIBILITIES.

Each participant applying for LIHEAP benefits will, to the extent permitted by their physical and mental condition, provide all necessary and reasonable verification to establish eligibility, and otherwise cooperate in the eligibility determination process. ()

104. RELATIONSHIP TO OTHER PROGRAMS.

LIHEAP benefits paid to eligible participant households will not be counted as income or resources for any purpose under any federal or state law, including any law relating to taxation, public assistance, or welfare programs. ()

105. -- 149. (RESERVED)

150. ELIGIBILITY REQUIREMENTS AND COLLATERAL CONTACTS.

All participant households assisted through LIHEAP must provide proof they meet both financial and non-financial eligibility requirements. ()

01. Failing to Meet the Financial and Non-Financial Eligibility. Participant households failing to meet the financial and non-financial eligibility requirements will be denied LIHEAP assistance. ()

02. Participant's Signature. A participant's signature on the application is their consent for the Department to contact collateral sources for verification of the eligibility requirement(s). ()

151. INCOME ELIGIBILITY REQUIREMENTS.

- 01. Households Receiving SSI or Food Stamps.** Households in which one (1) or more individuals are receiving one (1) of the following are eligible for LIHEAP: ()
- a.** Supplemental Security Income (SSI) under Title XVI of the Social Security Act; or ()
 - b.** Food Stamps under the Food Stamp Act of 1977, under 7 USC 2011 through 2027. ()
- 02. Income Not Counted.** Income listed in Subsections 151.02.a. through 151.02.t. is not counted in determining LIHEAP eligibility or benefit level. ()
- a.** Benefit payments from Medicare Insurance. ()
 - b.** Private loans made to the participant or the household. ()
 - c.** Assets withdrawn from a personal bank account. ()
 - d.** Sale of real property, if the funds are reinvested within three (3) calendar months. ()
 - e.** Income tax refunds. ()
 - f.** Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than thirty dollars (\$30) during the three (3) month period before application for LIHEAP. ()
 - g.** Wages or allowances for attendant care when the attendant resides in the household of the disabled member. ()
 - h.** Interest income of thirty dollars (\$30) or less received during the three (3) month period before application for LIHEAP. ()
 - i.** Legal fees or settlements from Workman’s Compensation paid in a lump sum. ()
 - j.** Monies received for educational purposes from NSDL, College work-study programs, State Student Incentive grants, SEOG, Pell, Guaranteed Student Loans and Supplemental grants funded under Title IV, A-2. ()
 - k.** Monies from VA-GI Bill for Education. ()
 - l.** Department of Health and Welfare Adoption subsidies. ()
 - m.** Compensation provided volunteers in the Older American Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, Title V Senior Employment Program. ()
 - n.** Third party payments made by a non-household member on behalf of the household. Third party payments include child care, energy assistance funds, shelter, food and clothing assistance. ()
 - o.** Value of food stamps or donated food to household. ()
 - p.** Utility allowance. ()
 - q.** TAFI lump sum payments. ()
 - r.** Tribal crop or land payments. ()
 - s.** AmeriCorps stipend. ()
 - t.** Child support income. ()

152. NONFINANCIAL ELIGIBILITY REQUIREMENTS.

01. Residence. When the application is completed, the household must reside in the state of Idaho. LIHEAP benefits are not transferable to an out-of-state residence. ()

02. Living Situations. The household resides in housing where they are responsible for home energy costs and incur the costs either directly or as an undesignated portion of their rent. ()

03. Native Americans. Native American households whose tribe has entered into a separate agreement with the federal funding agency and the Department to receive LIHEAP grant funds, are not entitled to benefits under this program unless: ()

a. Tribal funds are not available. ()

b. Funds are depleted and an emergency exists. ()

04. Resident Status. As part of the application process, participants must sign a declaration, under penalty of perjury, attesting to the residency or citizenship status of all household members. At least one (1) household member must be a citizen or legal resident of the United States. ()

153. -- 200. (RESERVED)

201. APPLICATION PROCESS.

A participant will be provided a prompt opportunity to complete an application for assistance. ()

01. Date of Application. The participant application process begins the date the completed and signed application is received. ()

02. Participant Representation. A participant household may be assisted by an adult person or persons of their choice and, when accompanied by such persons, may be represented by them. ()

03. Signature. The application must be signed by the participant designated as the head of household, or their designee. Electronic signatures are acceptable. ()

a. Applications signed by a designee must have a letter of authorization or power of attorney from the participant included in the file. ()

b. Employees of the Department are not authorized to sign the application. ()

04. Signature by Mark. A signature by mark requires two (2) witnesses. The signatures and addresses of the witnesses must appear on the application, followed by the word "witness." ()

05. Assistance with Application. When completing the application forms or obtaining required documentation, the Department will assist limited or non-English speaking applicants by providing interpreter services. ()

202. APPLICATION TIME LIMITS AND DISPOSAL ACTIONS.

Unless circumstances beyond the control of the Department prohibit it, each application is to be acted upon within thirty (30) days from the date the application is completed and signed by the participant. An application for LIHEAP assistance will be disposed of by one (1) of the following three (3) methods: ()

01. Approval. A determination the participant household is eligible for LIHEAP benefits. ()

02. Denial. A determination the participant household is ineligible for LIHEAP benefits or that eligibility could not be determined due to lack of necessary information or verification. ()

03. Withdrawal. The participant household voluntarily requests that no further consideration be given

to their application or the participant becomes deceased. ()

203. NOTIFICATION OF DECISION.

Each participant household will be notified, in writing, of the decision made with regard to their LIHEAP application for assistance. ()

01. Approvals. At the time the application is completed, the participant household will receive a copy of their preliminary approval notification. The Department issuance of the benefit payment or denial notice will be the participant household's formal eligibility notification. ()

02. Denials or Withdrawals. The LIHEAP Notice of Denial will be provided to participant households denied assistance and include the reason for the denial and an explanation of the participant household's right to appeal the eligibility decision. ()

204. -- 299. (RESERVED)

300. VENDOR AGREEMENTS.

All participating energy suppliers will enter into a vendor agreement with the Department to provide home energy assistance to eligible participant households. ()

301. OVERPAYMENTS.

Payments issued on behalf of a participant household that is not eligible must be repaid to the Department. ()

302. RECOUPMENT OF OVERPAYMENT.

01. Recoupment of Overpayment. The Department may recoup or recover the amount issued on behalf of a LIHEAP participant. Interest will accrue on overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Recoupment of an overpayment based on Department error may be collected from a vendor or participant when the overpayment is one hundred dollars (\$100), or more. Interest will not accrue on overpayments made due to Department error. An overpayment due to vendor or participant error, intentional program violations (IPV), or fraud must be recovered in full. ()

02. Repayment Requirement. A vendor or participant must repay any overpayment, but may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in revocation of that agreement and may result in the revocation of the vendor agreement. ()

303. -- 309. (RESERVED)

310. INTENTIONAL PROGRAM VIOLATIONS (IPV).

An IPV is an intentionally false or misleading action or statement. An IPV is established when a vendor or participant admits the IPV in writing and waives the right to an administrative hearing, or when determined by an administrative hearing, a court decision, or through deferred adjudication. Deferred adjudication exists when the court defers a determination of guilt because the accused vendor or participant meets the terms of a court order or an agreement with the prosecutor. The following are IPV's: ()

01. False Statement. Made to the Department by an individual or vendor orally or in writing, to participate in LIHEAP. ()

02. Misleading Statement. Made to the Department by an individual or vendor orally or in writing, to participate in LIHEAP. ()

03. Misrepresentation of Fact. Made to the Department by an individual or vendor orally or in writing, to participate in LIHEAP. ()

04. Concealed Fact. Concealed or withheld from the Department by an individual or vendor to participate in LIHEAP. ()

- 05. **Non-Compliance with Rules and Regulations.** ()
- 06. **Violation of Vendor Agreement.** ()
- 07. **Failure to Repay.** ()

311. PENALTIES FOR AN IPV.

When the Department determines an IPV was committed, the participant or vendor who committed the IPV loses eligibility to participate in LIHEAP. If an individual in a LIHEAP household has committed an IPV, the entire household is ineligible for LIHEAP. If a vendor has committed an IPV, the vendor is ineligible to receive payments. The period of ineligibility for each offense, for both a participant or a vendor, is as follows: ()

01. First Offense. Twelve (12) months, for the first IPV or fraud offense, or the length of time specified by the court. ()

02. Second Offense. Twenty-four (24) months for the second IPV or fraud offense, or the length of time specified by the court. ()

03. Third Offense. Permanent ineligibility for the third or subsequent IPV or fraud offense, or the length of time specified by the court. ()

312. -- 319. (RESERVED)

320. DENIAL OF PAYMENT.

The Department may deny payment to the vendor or participant for the following reasons: ()

01. Services Not Provided. Any or all claims for vendor services the Department determines were not provided. ()

02. Contrary to Rules or Provider Agreement. Vendor services provided contrary to these rules or the vendor agreement. ()

03. Failure to Provide Immediate Access to Records. The vendor does not allow immediate access by the Department to LIHEAP records. ()

04. Willful Misrepresentation or Concealment of Facts. The vendor or participant willfully misrepresents or conceals facts relating to LIHEAP. ()

321. -- 349. (RESERVED)

350. TERMINATION OF VENDOR STATUS.

Under Section 56-209h, Idaho Code, the Department may terminate the vendor agreement of, or otherwise deny vendor status for up to five (5) years from when the Department's action becomes final to any individual or entity providing LIHEAP. The following are bases for the Department to terminate vendor status: ()

01. Knowing Submission of an Incorrect Claim. ()

02. Submission of a Fraudulent Claim. ()

03. False Statements. Knowingly making a false statement or representation of material facts in any document required to be maintained or submitted to the Department. ()

04. Failure to Provide Immediate Access to Required Documentation Upon the Department's Written Request. ()

05. Non-Compliance With Rules and Regulations. ()

06. Violation of Material Term or Condition of the Vendor Agreement. ()

07. Failure to Repay. Failure by a managing employee or one with an ownership or control interest in any entity to repay overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or vendor agreement. ()

08. Fraudulent or Abusive Conduct in Connection with the Delivery of LIHEAP-Funded Services. Being found, or being a managing employee in any entity who is found, to have engaged in fraudulent or abusive conduct. ()

351. (RESERVED)

352. VENDOR OR PARTICIPANT NOTIFICATION.

When the Department determines any actions defined in Sections 310 through 350 of these rules are appropriate, it will send written notice of the decision to the vendor or participant. The notice will state the basis for the action, the length of the action, the effect of the action on the participant or the vendor's ability to provide services under state and federal programs, and appeal rights. ()

353. -- 994. (RESERVED)

995. PROVISIONS CONTINGENT UPON FEDERAL FUNDING.

The provisions in these rules are contingent upon availability and receipt of funds appropriated through federal legislation. When federal funds are not available to the state of Idaho, these provisions or any part therein are considered dormant; there may be no advance notice of termination or reduction of benefits. If additional funds are available, a supplemental payment may be made, in an equitable manner, to each eligible household at the discretion of the Director. ()

996. -- 999. (RESERVED)