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 16.03.04 - Rules Governing the Food Stamp Program (Docket No. 16-0304-0801) (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 16.03.04 - Rules Governing the Food Stamp Program (Docket No. 16-0304-0801) (Temporary and Proposed)

According to the Department, the temporary and proposed rule contained in Docket No. 16-0304-0801, rules governing the food stamp program (hereafter "temporary and proposed rule"), is authorized by section 56-203, Idaho Code. Section 56-203, Idaho Code, provides a listing of the Department's powers, including cooperation with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services. The Department's general rulemaking authority is granted in section 202(b), Idaho Code.

The Governor's justification for the temporary rule is to confer a benefit to food stamp participants. The temporary rule went into effect on May 1, 2007.

The Department explains that the temporary and proposed rule is intended to allow self-employed individuals with high self-employment expenses to retain food stamp benefits by using the individual's actual income and actual expenses in calculating self-employment income. The Department believes that rule change will align with the Department's philosophy of supporting employment so that Idahoans can be self-reliant.

According to the Department, no fee or charge is imposed by the temporary and proposed rule. The Department states that there is no anticipated impact to the General Fund greater than $10,000 during the fiscal year as a result of the temporary and proposed rule. The Department did not provide information regarding negotiated rulemaking. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or agency, not later than June 18, 2008. The Department states that all written comments must be delivered to the Department on or before July 25, 2008.

ANALYSIS

Section 426 is amended to provide a definition for "self-employment income" as income from a business that is a sole proprietorship. "Sole proprietorship" is defined as a business owned by one person. Under this definition, a corporation or a limited liability company could qualify as a sole proprietorship. Under the temporary and proposed rule, there are two types of self-employment businesses: a self-employed farmer and all other self-employment businesses.

The temporary and proposed rule deletes section 427 which provided a non-farming self-employment income standard deduction of fifty percent of gross income; section 431 which provided for computing farming self-employment income; section 432 which provided for averaging monthly income for a self-employed farmer with annual gross income of at least $1,000; and section 434 which provided that annualized income, expenses and loss for the remaining months in the certification period are removed when a farmer stops a farming operation.

Newly designated section 427, addressing self-employment income averaging, provides that seasonal self-employment income calculations apply to all seasonally employed <u>individuals</u> (rather than seasonally <u>non-farming</u> self-employed <u>households</u> under the old rule).

Newly designated section 428 addresses the calculation of self-employment income (not just non-farming self-employment income as provided under the old rule). The term "income" replaces "earnings" in the temporary and proposed rule. If past income does not reflect expected future income, a proportionate adjustment is made. The temporary and proposed rule does not address how the proportionate adjustment is to be made. The temporary and proposed rule deletes the methods previously used to determine monthly earnings.

The self-employment expense deduction is determined in two ways: (1) The default method is the old standard deduction of fifty percent of gross monthly self-employment income; or (2) if the actual expenses exceed the standard fifty percent deduction, subtracting the actual allowable expenses from the gross monthly self-employment income. The temporary and proposed rule does not address what is an allowable expense.

Newly designated section 429 provides a means for subtracting a farmer's self-employment income loss from other countable income in the household in accordance with 7 CFR 273.11(a)(2)(ii)(A) and (B). Under the CFR rule, offsets are first provided for farm self-employment losses against other self-employment income with any remaining farm self-employment losses being offset against the total amount of earned and unearned income after the earned income deduction has been applied. The CFR reference replaces the Department's deleted formula of subtracting such losses first from non-farm self-employment income, next from total earned income, and last from total unearned income, with net losses being prorated over the year.

SUMMARY

The temporary and proposed rule appears to be authorized by sections 56-202(b) and 56-203(b), Idaho Code.

cc: Department of Health and Welfare
Sherri Kovach & Rosie Andueza

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-0801

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 Section 56-203, 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 Wednesday, 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 amending the Food Stamp rule regarding the calculation of self-employment income so that applicants who are self-employed, and who have high expenses in their self-employment enterprises, do not have their Food Stamp benefits denied or reduced based on self-employment income not actually available to them. This rule change aligns with the Department's philosophy of supporting employment so that Idahoans can be self-reliant.

Specifically, new language is being added to allow an applicant's actual income and actual expenses to be used in the calculation of self-employment income when determining eligibility for Food Stamp benefits.

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 because it confers a benefit to food stamp participants.

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza (208) 334-5553.

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

DATED this ________ day of ________________________________, 2008.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
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Boise, Idaho 83720-0036
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0801

426. SELF-EMPLOYMENT INCOME.
For the purposes of these rules, self-employment income is from a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. The Idaho Food Stamp Program recognizes two (2) types of self-employment businesses. ~~*(3-30-07)*~~(5-1-08)T

01. **~~*Farming*~~ A Self-Employ~~*ment*~~ed Farmer**. ~~*The*~~ To be considered a self-employed farmer, a person must receive, or expect to receive, an annual gross income of one thousand dollars ($1000) or more ~~*to be a self-employed farmer*~~ earned from farming activities. ~~*(3-30-07)*~~(5-1-08)T

02. **~~*Non-Farming*~~ All Other Self-Employment Businesses**. ~~*All other self-employment businesses.*~~ ~~*(3-30-07)*~~(5-1-08)T

~~***427. COMPUTING NON-FARMING SELF-EMPLOYMENT INCOME STANDARD DEDUCTION.***~~
~~*Net self-employment income for a non-farming business is computed by subtracting fifty percent (50%) from the gross income as an allowable standard deduction from non-farming self-employment earnings.*~~ ~~*(3-30-07)*~~

42~~*8*~~7. ~~*WHEN NON-FARMING*~~ AVERAGING SELF-EMPLOYMENT INCOME ~~*MUST BE AVERAGED OVER TWELVE MONTHS*~~.

01. Annual Self-Employment Income. ~~*Non-farming*~~ When self-employment income~~*, if it*~~ is considered annual support by the household, ~~*must be*~~ the Department average~~*d*~~s the self-employment income over a twelve (12) month period, even if: (5-1-08)T

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

b. ~~*t*~~The household receives income from other sources in addition to self-employment. ~~*(3-30-07)*~~(5-1-08)T

~~***429. AVERAGING SEASONAL NON-FARMING SELF-EMPLOYED INCOME.***~~
02. Seasonal Self-Employment Income. A ~~*S*~~seasonally ~~*non-farming*~~ self-employed ~~*households*~~ individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages ~~*S*~~self-employment income ~~*intended to meet the household's needs*~~ for only the part of the year ~~*must be averaged over the period of time*~~ the income is intended to cover. ~~*(3-30-07)*~~(5-1-08)T

4~~*30*~~28. ~~*COMPUTING NON-FARMING*~~ CALCULATION OF SELF-EMPLOYMENT INCOME.
The Department ~~*Compute non-farming*~~ calculates self-employment income by adding ~~*projected*~~ monthly ~~*earnings*~~ income to ~~*projected*~~ capital gains and subtracting ~~*the self-employment standard deduction*~~ a deduction for expenses as determined in Subsection 428.03 of this rule. ~~*(3-30-07)*~~(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 reflect~~ive of~~ expected future ~~*earnings*~~ income, ~~*make*~~ a proportionate adjustment is made to the expected monthly ~~*earnings*~~ income. ~~*Determine the monthly earnings by the using one (1) of the following:*~~ ~~*(3-30-07)*~~(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.*~~ ~~*(3-30-07)*~~

~~***b.***~~ ~~*If no tax return is available, the self-employment income is averaged over the period of time the enterprise has been in operation,*~~ ~~*(3-30-07)*~~

02. ~~***Add Monthly***~~ **Capital Gains Income**. Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department ~~*C*~~calculates capital gains using the federal income tax method. ~~*Determine i*~~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 4~~*30*~~28.01 of ~~*these*~~ this rule~~*s*~~, to determine the gross monthly income. ~~*(3-30-07)*~~(5-1-08)T

03. ~~***Subtract Non-Farming***~~ **Self-Employment** ~~***Standard***~~ **Expense Deduction**. The Department uses the standard self-employment deduction in Subsection 428.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses as described in Subsection 428.03.b. of this rule. (5-1-08)T

a. ~~*Subtract fifty percent (50%) of the gross monthly income as a*~~ The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 428.01 and 428.02 of this rule~~*. This is the projected non-farming self-employment monthly income.*~~; or ~~*(3-30-07)*~~(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. (5-1-08)T

~~***431. COMPUTING FARMING SELF-EMPLOYMENT INCOME.***~~

~~*For farming self-employment, compute net income by subtracting allowable expenses from the gross income as follows in Subsections 431.01 through 431.04 of these rules.*~~ ~~*(3-30-07)*~~

~~***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:*~~ ~~*(3-30-07)*~~

~~***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.*~~ ~~*(3-30-07)*~~

~~***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,*~~ ~~*(3-30-07)*~~

~~***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 431.01 of these rules to determine the gross monthly income.*~~ ~~*(3-30-07)*~~

~~***03. Subtract Allowable Expenses***~~~~*. Subtract any allowable expenses for farming self-employment, except those listed in Subsection 431.04 of these rules for expenses that are not allowed. This is the projected farming self-employment monthly income.*~~ ~~*(3-30-07)*~~

~~***04. Costs Not Allowed for Farming Self Employment Expenses.***~~ The following items are not allow~~ed~~able ~~as costs of doing business~~ expenses and may not be subtracted from ~~the farming~~ gross monthly self-employment income. ~~(3-30-07)~~(5-1-08)T

~~a~~i. Net losses from previous ~~Certification Periods~~ tax years; ~~(3-30-07)~~(5-1-08)T

~~b~~ii. Federal, ~~S~~state, and local income taxes; ~~(3-30-07)~~(5-1-08)T

~~c~~iii. Money set aside for retirement; (3-30-07)

~~d~~iv. Work-related personal expenses such as transportation to and from work; and ~~(3-30-07)~~(5-1-08)T

~~e~~v. Depreciation. (3-30-07)

~~**432. AVERAGING FARM SELF-EMPLOYMENT INCOME.**~~

~~*To be a self-employed farmer, the farmer must get or expect to get annual gross income of one thousand dollars ($1000) or more from farming. Self-employed farmers will have their income and income-producing expenses averaged over a twelve (12) month period. This average monthly income is used to compute the amount of the Food Stamp benefits. If the average income does not reflect actual income due to a large increase or decrease in business, the farm self-employment income must be calculated based on expected earnings. For a cash crop farmer, use the gross amount from the most recent crop sale.*~~ ~~*(6-1-94)*~~

4~~33~~29. OFFSETTING FARM SELF-EMPLOYMENT LOSSES.

If a farmer's cost of producing self-employment income results in a loss, the Department ~~*loss must be*~~ subtract~~*ed*~~s the loss from other countable income in the household in accordance with 7 CFR 273.11(a)(2)(A) and (B). ~~*First, subtract from non-farm self-employment income. If any loss remains, subtract the remaining loss is subtracted from the total of earned income. If any loss remains, subtract the remaining loss from the total of unearned income. Net losses from the self-employment income of a farmer are prorated over the year.*~~ ~~*(6-1-94)*~~(5-1-08)T

~~**434. TERMINATION OF FARM SELF-EMPLOYMENT INCOME.**~~

~~*Where a farmer stops a farming operation during a certification period, remove the annualized income, expenses and loss for the remaining months in the certification period.*~~ ~~*(6-1-94)*~~

43~~5~~0. -- 499. (RESERVED).