

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Dept. Of Health & Welfare:

IDAPA 16.03.01 - Eligibility for Health Care Assistance for Families and Children

(Docket No. 16-0301-0801) (Temporary and Proposed);

IDAPA 16.03.04 - Rules Governing the Food Stamp Program in Idaho (Docket No. 16-0304-0802)

(Temporary and Proposed);

IDAPA 16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)

(Docket No. 16-0305-0801) (Temporary and Proposed);

IDAPA 16.03.06 - Rules Governing Refugee Medical Assistance (Docket No. 16-0306-0801)

(Temporary and Proposed); and

IDAPA 16.03.08 - Rules Governing Temporary Assistance for Families in Idaho (TAFI)

(Docket No. 16-0308-0802) (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 8-7-08. 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 9-4-08.

\_\_\_\_\_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: July 16, 2008

SUBJECT: Department of Health and Welfare:  
\* IDAPA 16.03.01 - Eligibility for Health Care Assistance for Families and Children (Docket No. 16-0301-0801) (Temporary and Proposed);  
\* IDAPA 16.03.04 - Rules Governing the Food Stamp Program in Idaho (Docket No. 16-0304-0802) (Temporary and Proposed);  
\* IDAPA 16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD) (Docket No. 16-0305-0801) (Temporary and Proposed);  
\* IDAPA 16.03.06 - Rules Governing Refugee Medical Assistance (Docket No. 16-0306-0801) (Temporary and Proposed); and  
\* IDAPA 16.03.08 - Rules Governing Temporary Assistance for Families in Idaho (TAFI) (Docket No. 16-0308-0802) (Temporary and Proposed).

The Department of Health and Welfare submits temporary and proposed rule docket Nos. 16-0301-0801 (Eligibility for Health Care Assistance for Families and Children); 16-0304-0802 (Rules Governing the Food Stamp Program in Idaho); 16-0305-0801 (Rules Governing Eligibility for Aid to the Aged, Blind and Disabled); 16-0306-0801 (Rules Governing Refugee Medical Assistance); and 16-0308-0802 (Rules Governing Temporary Assistance for Families in Idaho) (hereinafter “temporary and proposed rules”) to amend IDAPA chapters 16.03.01, 16.03.04, 16.03.05, 16.03.06 and 16.03.08.

According to the Department, this rulemaking is to comply with new laws imposed by the federal government that confer benefits for two new immigration classifications for certain Afghan and Iraqi immigrants who have worked for the United States and would be facing ongoing threat if they were to stay in their own country. In addition, the Department states that Docket No. 16-0301-0801 is being amended to align provisions for Transitional Medicaid with federal law which requires the participant to report quarterly and to delete procedural language.

The Governor's justification for the temporary and proposed rules is to comply with deadlines in amendments to governing law or federal programs and to confer a benefit to special immigrants for health care. No federal deadlines are specified by the Department. The temporary rules went into effect on three dates: December 26, 2007, with regard to the Afghan special immigrants; January 28, 2008, with regard to the Iraqi special immigrants; and July 1, 2008, with regard to Transitional Medicaid.

According to the Department, the temporary and proposed rules are authorized pursuant to sections 56-202 and/or 56-203, Idaho Code; Public Laws 110-161 and 110-181; and/or 45 CFR. Parts 260-265. Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority under Idaho's public assistance law. Section 56-203(b), Idaho Code, provides the Department with the power to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services and other matters of mutual concern. Section 56-203(g), Idaho Code, grants the Department the power to define persons entitled to medical assistance in such terms as will meet requirements for federal financial participation in medical assistance payments.

The Department does not state what provisions in Public Laws 110-161 and 110-181 it relies upon as authority. Public Law 110-161 is the Consolidate Appropriations Act of 2008, and includes appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008. Public law 110-181 is the National Defense Authorization Act for Fiscal Year 2008, with certain modifications to address the foreign sovereign immunities provisions of title 28, United States Code, with respect to the attachment of property in certain judgements against Iraq, the lapse of statutory authorities for the payment of bonuses, special pays, and similar benefits for members of the uniformed services and for other purposes. 45 CFR Parts 260-265 provide for general temporary assistance for needy families (TANF) provisions, ensuring that recipients work, accountability provisions--general, expenditure of state and federal TANF funds, other accountability provisions and data collection and reporting requirements. The Department failed to provide a copy of the specific federal law or regulation upon which the proposed rulemaking is based as required by section 67-5223(1), Idaho Code.

According to the Department, no fee or charge is imposed by the temporary and proposed rules. The Department states that Docket No. 16-0301-0801, dealing with eligibility for health care assistance for families and children, has an anticipated fiscal impact to the state general fund of \$332,947, which is thirty percent (30%) of federal matching funds that Docket No. 16-0305-0801, dealing with eligibility for aid to the aged, blind and disabled, has an anticipated general fund impact of \$58,108, which is also thirty percent (30%) of federal matching funds. No general fund impact is anticipated by the Department for Docket Nos. 16-0304-0802, 16-0306-0801 or 16-0308-0802.

According to the Department, negotiated rulemaking was not conducted because the rulemaking is being made to comply with federal regulations. The Department states that public

hearing(s) will be scheduled if requested in writing by 25 persons, a political subdivision or an agency, not later than August 20, 2008. All written comments must be delivered to the Department on or before August 27, 2008.

## ANALYSIS

### 1. Afghan and Iraqi Special Immigrant Amendments

Four of the five dockets provide identical program eligibility language for “Afghan Special Immigrants” (“Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are eligible for six (6) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status.”) and for “Iraqi Special Immigrants” (“An Iraqi special immigrant, as defined in Public Law 100-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status.”). See IDAPA sections 16.03.01.220.13 and .14; 16.03.05.106.15 and .16; 16.03.06.100.02 and .03; and 16.03.08.131.09 and .10.

Docket No. 16-0304-0802 reaches the same result by amending its Food Stamps “Citizenship and Qualified Non-Citizen Requirements” to include “regarding special immigrants, Public Law 110-161, effective December 26, 2007, and Public Law 110-181, effective January 28, 2008.”

In addition, Docket No. 16-0301-0802 has been amended to provide that sponsor deeming is not required for Afghan special immigrants or Iraqi special immigrants. IDAPA 16.03.01.251. This docket has been further amended to provide that a child who is an Afghan special immigrant and is approved for six months or who is an Iraqi special immigrant and is approved for eight months is not eligible for continuous health care assistance. IDAPA 16.03.01.525.02.c and .d.

### 2. Additional Docket No. 16-0301-0802 Amendments

According to the Department, Docket No. 16-0301-0802 is being further amended to align provisions for Transitional Medicaid with federal law which requires the participant to report quarterly and to delete procedural language from the rule.

The eligibility for Transitional Medicaid has been changed under the temporary and proposed rule. Now, individuals or families may be eligible for up to twelve months of Transitional Medicaid if the family income exceeds the AFDC payment standard for one of three reasons: (1) The family has Idaho TAFI income and income from employment and must have received AFCD-related Medicaid in Idaho the month before becoming ineligible; (2) Employment income has increased and the family received AFDC-related Medicaid in Idaho three of the past six months before becoming ineligible; or (3) The family is no longer entitled to

the thirty dollars plus one-third income disregard (disallowed after four months) or the thirty dollar disregard (disallowed eight months after the thirty dollars plus one third income disregard expires) and the family received AFDC-related Medicaid in Idaho three of the past six months before becoming ineligible. The AFDC payment standard, set forth in a table at IDAPA 16.03.01.411, was last updated on March 30, 2007, and ranges from \$643 (per month?) for one person to \$2,426 (per month?) for a family of ten. Previously, Transitional Medicaid did not reference back to the AFDC payment standard table.

The temporary and proposed rule deletes the “Transitional Medicaid Notice Requirements,” which were stated at IDAPA 16.03.01.422. The “Transitional Medicaid Reporting Requirements” stated at IDAPA 16.03.01.423 have been reworked to provide that the three quarterly reports containing specific information must be completed and returned if a family is to continue to receive Transitional Medicaid for month seven through twelve. Each report must include the family gross earnings, expenses for dependent care needed for employment, any change in family composition and proof of month earnings and dependent care expenses.

The “Income Test for Transitional Medicaid” at IDAPA 16.03.01.424 has also be completely reworked to eliminate specific step-by-step income tests. In their place the income test is now: “The family’s reported earnings, less dependant care expenses necessary for employment, must not exceed one-hundred and eighty-five percent (185%) of FPG for the family size.”

#### SUMMARY

The Department’s temporary and proposed rule changes appear to be authorized under sections 56-202(b), 56-203(b) and (g), Idaho Code.

cc: Dept. of Health & Welfare: Sherri Kovach, Peggy Cook, Rosie Andueza,  
& Genie Sue Weppner

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN**

#### **DOCKET NO. 16-0301-0801**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective dates of this temporary rule is December 26, 2007, January 28, 2008, and July 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, Idaho Code, and Public Laws 110-161, and 110-181.

**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 August 20, 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 federal government imposed new laws that confer benefits for two new immigration classifications for certain Afghan and Iraqi immigrants. These immigrants previously worked for the United States and would be facing ongoing threats if they were to stay in their own country. The rules for medical assistance are being aligned with these federal regulations allowing special immigrants eligibility for health care.

These rules are also being amended to align provisions for Transitional Medicaid with federal law which requires the participant to report quarterly and will delete procedural language from the rules.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because of changes to federal regulations and it confers a benefit to special immigrants for health care.

**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:

The anticipated fiscal impact to the state general fund related to the special immigrants rulemaking is \$332,947, which is 30% of federal matching funds.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were required by federal law and confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

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 August 27, 2008.

DATED this 26th day of June, 2008.

Sherri Kovach, Program Supervisor  
DHW - Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-0801**

**220. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible, an individual must be a member of one (1) of the following groups: (3-30-07)

- 01. U.S. Citizen.** A U.S. Citizen; (3-30-07)
- 02. U.S. National, National of American Samoa or Swain's Island.** A U. S. national, or a national of American Samoa or Swain's Island. (3-30-07)
- 03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)
  - a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
  - b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
  - c.** The child is under eighteen (18) years of age; (3-30-07)
  - d.** The child is a lawful permanent resident; and (3-30-07)
  - e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who is currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; (3-30-07)
- 05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who were honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard for a reason other than their citizenship status, or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; (3-30-07)
- 06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, who is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c), who remained continuously present in the U.S. until he became a qualified non-citizen; (3-30-07)
- 07. Non-Citizen Entering On or After August 22, 1996.** A non-citizen who entered the U.S. on or after August 22, 1996, and who is: (3-30-07)
  - a.** A refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from

their date of entry; (3-30-07)

**b.** An asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)

**c.** An individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

**d.** An Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-30-07)

**e.** A Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act under Section 501(e) of P.L. 96-422 (1980), and can be eligible for seven (7) years from their date of entry; (3-30-07)

**08. Qualified Non-Citizen Entering On or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), who entered the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years; (3-30-07)

**09. American Indian Born in Canada.** An American Indian born in Canada, under 8 U.S.C. 1359; (3-30-07)

**10. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., who is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); (3-30-07)

**11. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; and (3-30-07)

**12. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-30-07)

**a.** Is under the age of eighteen (18) years; or (3-30-07)

**b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-30-07)

**i.** Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-30-07)

**ii.** Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

**13. Afghan Special Immigrants.** Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are eligible for six (6) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (12-26-07)T

**14. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (1-28-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. SPONSOR DEEMING.**

Income and resources of a legal non-citizen's sponsor and the sponsor's spouse are counted in determining eligibility. Sponsor deeming is not required for the following non-citizens: (~~3-30-07~~)(12-26-07)T



- a. Afghan special immigrants as described in Section 220 of these rules; or (12-26-07)T
- b. Iraqi special immigrants as described in Section 220 of these rules. (1-28-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**421. TRANSITIONAL MEDICAID.**

Individuals and families who were eligible for Title XIX ~~Medicaid coverage under the AFDC-related coverage groups are~~ Medicaid may be eligible for Transitional Medicaid if the family income exceeds ~~limits because of a reason the AFDC payment standard~~ listed in ~~Subsections 421.01 through 421.03~~ 411 of ~~this~~ these rules. ~~The family must have received AFDC-related Medicaid in Idaho in three (3) of the six (6) months before the month they became ineligible unless the family meets the condition in Subsection 421.01 of this rule. Eligible families may receive Transitional Medicaid.~~ A family may be eligible for up to twelve (12) continuous months of Transitional Medicaid, if any one (1) of the conditions in Subsections 421.01 through 421.03 of this rule is met. (4-2-08)(7-1-08)T

**01. Idaho TAFI Income and Income from Employment.** Family income exceeds ~~limits~~ the payment standard because they have Idaho TAFI income and income from employment. The family must have received AFDC-related Medicaid in Idaho the month prior to the month they became ineligible for AFDC-related Medicaid. (4-2-08)(7-1-08)T

**02. Employment Income Increased.** Family income exceeds ~~limits~~ the payment standard because employment income increased. The family must have received AFDC-related Medicaid in Idaho three (3) of the past six (6) months prior to the month they became ineligible for AFDC-related Medicaid. (4-2-08)(7-1-08)T

**03. No Longer Entitled to a Disregard ~~Expired~~.** Family income exceeds ~~limits~~ the payment standard because the ~~thirty dollar (\$30) plus one-third (1/3) or the thirty dollar (\$30)~~ family is no longer entitled to a disregard expired listed in Subsections 395.02 or 395.03 of these rules. The family must have received AFDC-related Medicaid in Idaho three (3) of the past six (6) months prior to the month they became ineligible for AFDC-related Medicaid. (4-2-08)(7-1-08)T

**422. ~~TRANSITIONAL MEDICAID NOTICE REQUIREMENTS (RESERVED).~~**

~~The participant must be provided notice during Transitional Medicaid as described in Subsections 422.01 and 422.02.~~ (4-2-08)

~~**01. Required Notice During First Six Months of Transitional Medicaid.** The Department will notify the participant of the reporting requirements and the option for months seven (7) through twelve (12) of Transitional Medicaid. The Department will send the notice and the report form in month three (3) and month six (6) of Transitional Medicaid.~~ (4-2-08)

~~**02. Required Notice During Second Six Months of Transitional Medicaid.** The Department will notify the participant of reporting requirements. The Department will send the notice and the report form in month nine (9) of TM.~~ (4-2-08)

**423. TRANSITIONAL MEDICAID REPORTING REQUIREMENT.**

~~Families receiving~~ To continue to receive Transitional Medicaid ~~are mailed three (3) for months seven (7) through twelve (12), the family must complete and return three (3) quarterly reports forms during the twelve (12) Transitional Medicaid months. Families must complete and return the reports as listed in Subsections 423.01 through 423.03.~~ Each report must include the family gross earnings, expenses for dependent care needed for employment, and any change to the family composition. Proof of monthly earnings and dependent care expenses must be provided with each report. (4-2-08)(7-1-08)T

~~**01. First Report.** The family must complete and return the report only if changes have occurred in earnings, household composition or work-related child care costs. The first report is due by day twenty-one (21) of~~

~~TM month four (4). The report covers TM months one (1) through three (3). (4-2-08)~~

~~**02. Second Report.** The family must complete and return the report only if changes have occurred in earnings, household composition or work related child care costs. The second report is due by day twenty one (21) of TM month seven (7). The report covers TM months four (4) through six (6). (4-2-08)~~

~~**03. Third Report.** The family must complete and return the report only if changes have occurred in earnings, household composition or work related child care costs. The third report is due by day twenty one (21) of Transitional Medicaid month ten (10). The report covers Transitional Medicaid months seven (7) through nine (9). (4-2-08)~~

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

~~When a family reports changes in earnings, household composition or child care costs, eligibility to receive months seven (7) through twelve (12) of Transitional Medicaid must be evaluated using the income tests listed in Section 424. Use the steps in Table 424.01 for the first income test, done at the end of month seven (7) of Transitional Medicaid. Use steps in Table 424.02 for the second income test, done at the end of month ten (10) of Transitional Medicaid. (4-2-08)~~

**01. First Transitional Medicaid Income, Test Done at the End of Month Seven.**

<del><b>TABLE 424.01—FIRST TRANSITIONAL MEDICAID INCOME TEST, DONE AT THE END OF MONTH SEVEN (7)</b></del>	
<del><b>STEP</b></del>	<del><b>ACTION</b></del>
<del>Step 1.</del>	<del>Add the gross monthly earnings from months four (4) through six (6) of Transitional Medicaid.</del>
<del>Step 2.</del>	<del>Subtract allowable child care costs from months four (4) through six (6) of Transitional Medicaid from the total gross earnings. Allowable child care costs are costs necessary for the employment of the caretaker relative, not paid by another party.</del>
<del>Step 3.</del>	<del>Divide the result of the computation in Step 2 by three (3). The result is the average monthly earnings.</del>
<del>Step 4.</del>	<del>Select the Federal Poverty Guideline amount for the family size and multiply that amount by one hundred eighty-five percent (185%).</del>
<del>Step 5.</del>	<del>Compare the average monthly earnings from Step 3 with the product of Step 4. If the average monthly earnings in Step 3 exceed the amount computed in Step 4, close Transitional Medicaid. Adequate notice is required.</del>

~~The family's reported earnings, less dependant care expenses necessary for employment, must not exceed one hundred and eighty-five percent (185%) of the FPG for the family size. (4-2-08)(7-1-08)T~~

**02. Second Transitional Medicaid Income Test, Done at the End of Month Ten.**

<del><b>TABLE 424.02—SECOND TRANSITIONAL MEDICAID INCOME TEST, DONE AT THE END OF MONTH TEN (10)</b></del>	
<del><b>STEP</b></del>	<del><b>ACTION</b></del>
<del>Step 1.</del>	<del>If the caretaker relative reports earnings in each of months seven (7) through nine (9) Transitional Medicaid eligibility continues. If no earnings go to Step 2.</del>

*Step 2. If no earnings are reported for any of months seven (7) through nine (9) of Transitional Medicaid, determine if the caretaker relative has good cause for the lack of earnings. Use the criteria in Subsection 419.03. If good cause does not exist, close Transitional Medicaid. Ten (10) day advance notice is required.*

~~(4-2-08)~~

- 032. Good Cause for Lack of Earnings.** Good cause for lack of earnings includes, but is not limited to: (4-2-08)
- a. Family crisis. (4-2-08)
  - b. Court required appearance or incarceration. (4-2-08)
  - c. Loss of transportation where no other means of transportation is readily accessible. (4-2-08)
  - d. Loss of child care arrangements. (4-2-08)
  - e. Involuntary loss of employment. (4-2-08)
  - f. Illness. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**525. CONTINUOUS HEALTH CARE ASSISTANCE ELIGIBILITY FOR CHILDREN UNDER AGE NINETEEN.**

Children under age nineteen (19), who are found eligible in an initial determination or a renewal, remain eligible for a period of twelve (12) months. The twelve (12) month continuous eligibility period does not apply if, for any reason, eligibility was determined incorrectly. (3-30-07)

**01. Reasons Continuous Eligibility Ends.** Continuous eligibility for children stops for one (1) of the following reasons: (3-30-07)

- a. The child is no longer an Idaho resident; or (3-30-07)
- b. The child dies; or (3-30-07)
- c. The participant requests closure; or (3-30-07)
- d. The child turns nineteen (19) years of age as defined in Subsection 010.05 of these rules. (3-30-07)

**02. Children Not Eligible for Continuous Eligibility.** Children are not eligible for continuous eligibility for one (1) of the following reasons: (3-30-07)

- a. A child is approved for emergency medical services; ~~or~~ ~~(3-30-07)~~(12-26-07)T
- b. A child is approved for pregnancy-related services; ~~or~~ ~~(3-30-07)~~(12-26-07)T
- c. A child is an Afghan special immigrant and is approved for six (6) months; or (12-26-07)T
- d. A child is an Iraqi special immigrant and is approved for eight (8) months. (1-28-08)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-0802**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is December 26, 2007.

**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, and Public Laws 110-161, and 110-181.

**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 August 20, 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 federal government imposed new laws that confer benefits for two new immigration classifications for certain Afghan and Iraqi immigrants. These immigrants previously worked for the United States and would be facing ongoing threats if they were to stay in their own country. The Food Stamp rules are being aligned with these federal regulations allowing special immigrants eligibility for food stamp assistance.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because of changes to federal regulations and it confers a benefit to special immigrants for food stamp participation.

**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.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were required by federal law and confer a benefit.

**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 August 27, 2008.

DATED this 27th day of June, 2008.

Sherri Kovach  
Program Supervisor  
DHW - Administrative Procedures Section  
450 West State Street - 10th Floor

P.O. Box 83720  
Boise, Idaho 83720-0036  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0802**

**204. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible for Food Stamps, an individual must meet the requirements specified in 7 CFR 273.4, "Citizenship and alien status;" ~~and~~ in accordance with Public Law 107-171 "Farm Security and Rural Investment Act of 2002," Title IV - Nutrition Programs, Subtitle D - Miscellaneous, Section 4401, regarding the partial restoration of benefits to legal immigrants; and regarding special immigrants, Public Law 110-161, effective December 26, 2007, and Public Law 110-181, effective January 28, 2008. (~~3-20-04~~)(12-26-07)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,**  
**BLIND, AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0801**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective dates of these temporary rules are December 26, 2007, and January 28, 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 56-202, Idaho Code, and Public Laws 110-161, and 110-181.

**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 August 20, 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 federal government imposed new laws that confer benefits for two new immigration classifications for certain Afghan and Iraqi immigrants. These immigrants previously worked for the United States and would be facing ongoing threats if they were to stay in their own country. The rules covering eligibility for the aged, blind, or disabled are being aligned with these federal regulations allowing special immigrants eligibility for benefits under this program.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because of changes to federal regulations and it confers a benefit to special immigrants for aid to the aged, blind, or disabled.

**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.

The anticipated fiscal impact to the state general fund related to this rulemaking is \$58,108 which is 30% of federal matching funds.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were required by federal law and confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

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 August 27, 2008.

DATED this 26th day of June, 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. 16-0305-0801**

**106. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 106.01 through 106.157 of these rules. An individual must also provide proof of identity as provided in Section 105 of these rules.

~~(3-30-07)~~(1-28-08)T

- 01. U.S. Citizen.** A U.S. Citizen. (3-30-07)
- 02. U.S. National, National of American Samoa or Swain's Island.** A U. S. National, National of American Samoa or Swain's Island. (3-30-07)
- 03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)
- a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
- b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
- c.** The child is under eighteen (18) years of age; (3-30-07)
- d.** The child is a lawful permanent resident; and (3-30-07)
- e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-30-07)
- 05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. (3-30-07)
- 06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-30-07)
- 07. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and; (3-30-07)
- a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)
- b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)
- c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)
- d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be

eligible for seven (7) years from the date of entry; or (3-20-04)

**e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry. (3-30-07)

**08. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years. (3-30-07)

**09. American Indian Born in Canada.** An American Indian born in Canada under 8 U.S.C. 1359. (3-30-07)

**10. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). (3-30-07)

**11. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance. (3-30-07)

**12. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

**a.** Is under the age of eighteen (18) years; or (3-20-04)

**b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

**i.** Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

**ii.** Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

**13. Qualified Non-Citizen Receiving Supplement Security Income (SSI).** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

**14. Permanent Resident Receiving AABD Cash On August 22, 1996.** A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

**15. Afghan Special Immigrants.** Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are eligible for six (6) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (12-26-07)T

**16. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (1-28-08)T

**157. Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements.** Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 106.01 through 106.146 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. ~~(3-30-07)~~(1-28-08)T



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.06 - RULES GOVERNING REFUGEE MEDICAL ASSISTANCE**  
**DOCKET NO. 16-0306-0801**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective dates of these temporary rules are December 26, 2007, and January 28, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, Idaho Code, and Public Laws 110-161, and 110-181.

**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 August 20, 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 federal government imposed new laws that confer benefits for two new immigration classifications for certain Afghan and Iraqi immigrants. These immigrants previously worked for the United States and would be facing ongoing threats if they were to stay in their own country. The rules covering refugee medical assistance are being aligned with these federal regulations for Afghan and Iraqi special immigrants to be eligible for assistance.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because of changes to federal regulations and it confers a benefit to special immigrants for medical assistance.

**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.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were required by federal law and confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

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 August 27, 2008.

DATED this 26th day of June, 2008.

Sherri Kovach  
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DHW - Administrative Procedures Section  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0306-0801**

**100. IDENTIFICATION OF REFUGEES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**02. Afghan Special Immigrants.** Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are eligible for six (6) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (12-26-07)T

**03. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (1-28-08)T

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

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

- b.** A person who entered the United States as a resident alien is not eligible. (4-2-08)
- c.** A Form I-94 which shows a person has been paroled into the United States under Section 212(d)(5) of the INA must clearly indicate that the person has been paroled as a “Refugee” or “Asylee” if such form was issued: (4-2-08)

  - i.** To a person from Cambodia, Laos, or Vietnam before October 1, 1997, in accordance with P.L. 106-429, Section 101(a), as amended by P.L. 108-447; or (4-2-08)
  - ii.** To a person from Cuba; or (4-2-08)
  - iii.** To a person from any other country at any time. (4-2-08)
- d.** A person whose status is Cuban/Haitian Entrant must have his eligibility for benefits under the Refugee Medical Assistance Program determined under Sections 125 and 200 of these rules. (4-2-08)
- e.** An Amerasian or close family member admitted as an immigrant but eligible for Refugee Medical Assistance as though he were a refugee must have either of the following documents verifying his status: (4-2-08)

  - i.** A temporary identification document, Form I-94 stamped “Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until (expiration date). Employment authorized.” The back of Form I-94 contains the stamped word “Admitted” and is coded AM1, AM2, or AM3; or (4-2-08)
  - ii.** A permanent identification document, Form I-551 coded AM6, AM7, or AM8. (4-2-08)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-0802

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective dates of these temporary rules are December 26, 2007, and January 28, 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 56-202, Idaho Code, 45 CFR Parts 260-265, Public Laws 110-161 and 110-081.

**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 August 20, 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 federal government imposed new laws that confer benefits for two new immigration classifications for certain Afghan and Iraqi immigrants. These immigrants previously worked for the United States and would be facing ongoing threats if they were to stay in their own country. The rules for temporary assistance for families are being aligned with these federal regulations allowing special immigrants eligibility for assistance.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because of changes to federal regulations and it confers a benefit to special immigrants for temporary assistance.

**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.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were required by federal law and confer a benefit.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 27, 2008.

DATED this 26th day of June, 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. 16-0308-0802**

**131. CITIZENSHIP AND QUALIFIED NON-CITIZEN CRITERIA.**

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 131.01 through 131.109 of this rule. ~~(3-20-04)~~(1-28-08)T

- 01. U.S. Citizen.** A U.S. Citizen; or (3-20-04)
- 02. U.S. National, National of American Samoa or Swains Island.** A U. S. National, National of American Samoa or Swains Island; or (3-20-04)
- 03. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (3-20-04)
- 04. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (3-20-04)
- 05. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (3-20-04)
- 06. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and (3-20-04)
- a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; or (3-20-04)
- b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (3-20-04)
- c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (3-20-04)
- d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)
- e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (3-20-04)
- 07. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (3-20-04)
- 08. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)
- a.** Is under the age of eighteen (18) years; or (3-20-04)
- b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-20-04)

**09. Afghan Special Immigrants.** Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are eligible for six (6) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (12-26-07)T

**10. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (1-28-08)T