

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:

16.04.16 - Rules Governing the Department of Energy Administration Weatherization
Program (Docket #16-0416-0801) Chapter Repeal;

16.04.16 - Weatherization Assistance Program in Idaho (Docket No. 16-0416-0802)
Chapter Rewrite.

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
11-13-08. 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 12-12-08.

_____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: October 24, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.04.16 -Rules Governing the Department of Energy Administration Weatherization Program (Docket No. 16-0416-0801) (Proposed Chapter Repeal); and Department of Health and Welfare - IDAPA 16.04.16 - Weatherization Assistance Program in Idaho (Docket No. 16-0416-0802) (Proposed Chapter Rewrite)

By these two Proposed Rule dockets, the Department of Health and Welfare proposes to repeal IDAPA 16.04.16 in its entirety (Docket No. 16-0416-0801) (hereinafter "chapter repeal") and replace it with a new IDAPA 16.04.16 (Docket No. 16-0416-0802)(hereinafter "chapter rewrite").

The Department states that the reason for the chapter repeal is to align the rule with current federal regulation regarding the weatherization assistance program in Idaho governed by the U.S. Department of Energy. The Department states that the chapter rewrite will update eligibility criteria to reference current federal poverty guidelines, remove outdated income tables and limitations, align allowable expenditures, update standards and techniques of weatherization materials and methods, align service delivery rules with current labor and monitoring practice, update definitions and comply with the Administrative Procedures Act.

According to the Department, the temporary and proposed rule is authorized pursuant to sections 56-202 and 56-203, Idaho Code, and Part Q of the Energy conservation in Existing Buildings Act, 42 U.S.C. 6861, et seq. and the U.S. Department of Energy Organization Act, 42 U.S.C. 1701, et seq.

Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority. Section 56-203(b), Idaho Code, gives the Department 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 in other matters of mutual concern.

Part Q [A?] of the Energy Conservation in Existing Buildings Act, codified at 42 U.S.C. section 6861, et seq. consists of numerous sections; the U.S. Department of Energy Organization Act is not codified at 42 U.S.C. section 1701 et seq. That portion of the U.S. Code deals with compensation for injury, death or detention of employees of contractors with the United States outside the United States. The Popular Names of Acts list shows the codification of the U.S. Department of Energy Organization Act at 20 U.S.C. 3401 et seq. The Department has not provided a copy of the specific federal law upon which this rulemaking is based as required by section 67-5223(1), Idaho Code. Given the information provided by the Department, the federal law authorization for the chapter rewrite cannot be confirmed.

According to the Department, no fee or charge is imposed by the temporary and proposed rule and there is no anticipated fiscal impact to the state General Fund as a result of this rulemaking other than the cost of publication. According to the Department, negotiated rulemaking was not conducted because the rule confers a benefit and is governed by [uncited] federal regulation. The Department states that a public hearing was scheduled in Boise on October 10, 2008. All written comments must be delivered to the Department on or before October 22, 2008.

ANALYSIS

Much of the chapter rewrite includes material from the chapter repeal with modifications, some housekeeping and some substantive. In addition, the chapter rewrite has not carried forward some material that was contained in the chapter repeal and has added new material that was not found in the chapter repeal. This memorandum will focus on the substantive changes.

Sections 000 through 006 of the chapter rewrite are basic information required by the Department of Administration, including legal authority, title and scope, written interpretations, administrative appeals, incorporation by reference, office - office hours - mailing address - street address - internet website and confidentiality of records and public records requests.

The “Written Interpretations” section states that “this agency may have written statements that pertain to the interpretations of the rules of this chapter.” Section 002. The Department cites section 67-5201(19)(b)(iv), Idaho Code, as its authority for ability to issue written interpretations. That provision specifies that a “rule” does **not** include any written statements given by an agency which pertains to the interpretation of a rule. Thus, any written interpretation of a rule promulgated by the Department is not a part of the rule itself and thus does not have the force of law. However, the use of written interpretations by the Department (and many other agencies), with the requirement that an interested party separately access those interpretations in an attempt to understand or comply with Department requirements imposes a burden on the public. Accessing these “Written Interpretations” through the Department’s website is difficult.

Three terms that are included in the chapter repeal are not carried forward into the chapter rewrite: “family unit,” “farm family” and “repair materials”). The chapter rewrite adds one new term to the definition section (and “shelter”), has redefined and modified the term “handicapped

person” as “person with disabilities,” and has substantively modified five definitions (“grantee,” “low-income,” “separate living quarters,” subgrantee,” and “weatherization materials”).

“Shelter is defined as “a dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.” Section 010.20. This term does not have a statutory equivalent.

“Person with disabilities” in the chapter rewrite is similar to the definition of “handicapped person” under the chapter repeal. However, the chapter rewrite has eliminated point cite references to the United States Code (U.S.C.), citing instead to sections in the Rehabilitative Act of 1973, the Social Security Act and the Developmental Disabilities Services and Facilities Construction Act. Citation to these act sections is not preferred. No online service provides ready reference to popular name acts, making it extremely difficult to find the cited act sections. However, the readily available U.S.C. can be quickly referenced.

The definition of “grantee” has been changed from “the Department’s State Economic Opportunity Office,” to the “Department of Health and Welfare” under the chapter rewrite. Section 010.10. “Subgrantee” has been changed from “those agencies that have entered into a contract and/or grant to conduct and implement weatherization projects for the Department’s State Economic Opportunity Office,” to “an entity managing a weatherization project which receives a grant or contract of funds awarded under this program from the Department or CAA,” [Community Action Agency]. Section 010.21.

Under the chapter rewrite, “low-income” has been modified to permit a poverty level higher than 125% of the Office of Management and Budget’s poverty level, that “has been established by the Secretary and is necessary to carry out the purpose of this part and is consistent with the eligibility criteria established for the weatherization program under Section 222(a)(12) of the Economic Opportunity Act of 1964.” “Low-income” is also defined, in the alternative, as “the basis for eligibility for assistance under the Low Income Home Energy Assistance Act of 1981, provided that such basis is at least one hundred and twenty-five (125) percent of the poverty level” Section 010.13.

The chapter rewrite states that the occupants of “separate living quarters” may be related or unrelated persons who share living arrangements, and includes shelters for homeless persons.” Section 010.19.

The definition of “weatherization materials” has been modified under the chapter rewrite to exclude: ceiling, attic, wall, floor and duct insulation; storm windows and doors, multiglazed windows and doors, and heat-absorbing or heat-reflective window and door materials; clock thermostats; water heater insulation; furnace efficiency modifications limited to replacement burners designed to substantially increase the energy efficiency of the heating system or devices for modifying flue openings which will increase the energy efficiency of the heating system; and

certain insulation or energy-conserving devices or technologies: skirtings, items to improve attic ventilation, vapor barriers, or materials used as a patch to reduce infiltration through the building envelope.” Chapter repeal section 002.27. Added to the definition of “weatherization materials” under the chapter rewrite are: furnace efficiency modifications, which include furnaces or boilers (or any combination thereof); devices for minimizing energy loss through heating system, chimney or venting devices; and cooling efficiency modifications that include replacement air conditioners, ventilation equipment, screening and window films and shading devices. Section 010.23.

The records that a subgrantee must keep under the chapter rewrite include documentation of the average: cost incurred in weatherization of individual dwelling units, size of the dwelling being weatherized and income of households receiving assistance. Sections 050.01.e, f and g. The chapter rewrite also specifies that the records and documentation the DOE finds necessary for an effective audit and performance evaluation as determined by the DOE Financial Assistance Rule must be kept by the subgrantee. Section 050.01.h.

The chapter rewrite adds a new section 051 on federal requirements for lead safe practices. The section provides that for all homes built before 1978, the requirements under 40 CFR 745 must be followed, with specified exceptions. These exceptions include: housing or housing facility renovations where a certified inspector or risk assessor has made a written determination or where a certified renovator has properly tested the affected components and found that the affected components are free from paint or surface coatings that contain a specified level of lead; and emergency, unplanned, renovations that are the result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment or property with significant damage (although cleaning requirements are not exempt). Sections 051.01, 02 and 03. Specified training requirements and work practice standards apply to all renovations performed by the program except for housing renovations where the owner has signed a written statement that no child under age six or pregnant woman resides at the residence, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA’s renovation, repair and painting rule. A child is deemed to reside in the primary residence of a custodial parent, legal guardian or foster parent or at the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker’s residence. Section 051.04.a.

The minimum program requirements have been modified by the chapter rewrite. The chapter rewrite clarifies that the dwelling unit must be occupied by the family unit. Section 100.01. Eligibility for weatherization may be met if the dwelling unit is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 125% of the Office of Management and Budgets poverty level. Section 100.01.c.

The chapter rewrite mandates additional requirements for weatherization of a rental dwelling unit: Not less than 66% of the dwelling units in the building or 50% for duplexes or

four unit buildings must be (or will within 180 days become) eligible dwelling units, section 100.02.b; the grantee has procedures to ensure that the benefits of the weatherization assistance will benefit the low-income tenants, section 100.02.c; eligible household tenants are not subject to a rent increase for a reasonable period after weatherization unless the increase is related to matters other than the weatherization, section 100.02.d; and in order to determine how many dwelling units exist in a shelter, the subgrantee may count each 800 square feet or each floor as a dwelling unit. Section 100.02.e.

Rather than provide income eligibility limit tables, the chapter rewrite cites to the Low Income Home Energy Assistance Act of 1981 as the authority for maximum income guidelines for the weatherization program. Section 101. No point cite to that Act is provided, and, as discussed above, the better citation procedure would be to cite to the USC. Under the chapter repeal, the income limitations were adjusted to 125% of the poverty income maxima established by the Community Services Administration. Given this information, it is difficult to determine whether the chapter rewrite has altered the maximum income eligibility limits.

The chapter rewrite has substantively changed what are allowable expenditures for the Weatherization Assistance Program. The chapter repeal provides caps on expenditures: a maximum of \$1,000 for any dwelling unit for purchase, delivery and storage of weatherization and repair materials (unless approved); a not to exceed \$440 per dwelling unit for specified transportation and maintenance items; a \$100 per dwelling unit limit for incidental repairs to the heating source; a 5% limit on subgrantee administrative expenses. The chapter rewrite provides no specified caps.

The chapter rewrite clarifies that the cost to purchase and deliver weatherization materials is an allowable expenditure. Section 200.01. Significantly, the chapter rewrite allows labor costs as an allowable expense when permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers or other federal or state training programs and payments to employ labor or to engage a contractor provided that a grantee has an adequate number of volunteers, training participants, public service employment workers or other federal or state training programs are not available. Section 200.02. Under the chapter repeal, allowable administrative costs did not include any cost of labor to carry out a weatherization project except for supervisors and foremen. Chapter repeal section 200.03.b.

Under the chapter rewrite, additional allowable expenditures pursuant to federal regulation include: carrying out low-cost/no-cost weatherization; program financial audits; allowable administrative costs; and the cost of eliminating health and safety hazards necessitated by installation of weatherization materials. Sections 202.10 through 14.

The chapter rewrite clarifies the limitations on the use of program funds and provides a new exception to the limitations: dwelling units partially weatherized under 10 CFR 440 (or under other federal programs between September 1975 and September 1993) may receive further financial assistance under 10 CFR 440, but must be reported separately and receive a new energy

audit which takes into account previous energy conservation improvements. Section 200.15.c.

The chapter rewrite provides new sections on low-cost and no-cost weatherization activities, section 201; weatherization materials standards and energy audit procedures, section 300; and oversight, training and technical assistance, section 500.

Limitations contained in federal regulation do not apply to an eligible dwelling unit when the funds are designated by the grantee for carrying out low-cost or no-cost weatherization activities, provided: inexpensive weatherization materials are used which are primarily directed toward reducing infiltration; and no labor is paid with the specified funds to install weatherization materials. Section 201. [The reference to “paragraph (a)(1) of this section” at section 201.01.a is confusing since no such paragraph exists.] The maximum allowed for these activities is 10% of the amount allocated to a subgrantee, not to exceed \$50 in materials cost per dwelling, unless a higher expenditure per dwelling unit is approved by the DOE regional representative. Section 201.02.

Rather than provide a table listing standards for weatherization materials, the chapter rewrite makes specific reference to the CFR. The chapter rewrite permits unlisted materials to be approved upon application to the DOE. Section 300.01. The chapter rewrite requires each individual weatherization material and packaged materials installed be cost effective. Section 300.02. The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness pursuant to federal regulation. Section 300.03.

The chapter rewrite provides that the Department will ensure that audits by or on the behalf of the subgrantees are conducted with reasonable frequency, on a continuing basis, or at scheduled intervals, usually annually, but not less than every two years, in accordance with federal regulation. Section 500.01.

The chapter rewrite does not include several sections contained in the chapter repeal, including the following: priorities for weatherization, with quotas for elderly, handicapped and rented multiple dwelling units, and a priority given to single, detached dwelling units, chapter repeal section 110; a specific listing of services to be provided, chapter repeal section 300; and service delivery priorities and requirements, chapter repeal section 500.

SUMMARY

The Department’s chapter repeal and chapter rewrite appear to be authorized pursuant to sections 56-202(b) and 56-203(b), Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock & Genie Sue Weppner

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.16 - RULES GOVERNING THE DEPARTMENT OF ENERGY ADMINISTRATION WEATHERIZATION PROGRAM

DOCKET NO. 16-0416-0801 (CHAPTER REPEAL)

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 Sections 56-202 and 56-203, Idaho Code, and Part Q of the Energy Conservation in Existing Buildings Act, 42 U.S.C. 6861, et seq. by the U.S. Department of Energy Organization Act, 42 U.S.C. 1701, et seq.

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

FRIDAY - OCTOBER 10, 2008 - 1:00 pm

**DEPARTMENT OF HEALTH & WELFARE
450 West State Street, Conference Rm. 7-A
Boise, ID**

The hearing site 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: This chapter is being repealed in order to rewrite the chapter to align Idaho's rules with current federal regulations regarding the Weatherization Assistance Program governed by the U.S. Department of Energy. The rewrite of the chapter is published in this Administrative Bulletin under Docket No. 16-0416-0802.

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 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 state general funds associated with this rulemaking. Funds for this program are provided by the U.S. Department of Energy.

NEGOTIATED RULEMAKING: Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because these rules confer a benefit and are governed by federal regulations.

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

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 October 22, 2008.

DATED this 19th day of August, 2008.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone (208) 334-6558 fax
dhwrules@dhw.idaho.gov

IDAPA 16.04.16 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.16 - WEATHERIZATION ASSISTANCE PROGRAM IN IDAHO

DOCKET NO. 16-0416-0802 (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 Sections 56-202 and 56-203, Idaho Code, and Part Q of the Energy Conservation in Existing Buildings Act, 42 U.S.C. 6861, et seq. by the U.S. Department of Energy Organization Act, 42 U.S.C. 1701, et seq.

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

**FRIDAY
OCTOBER 10, 2008
1:00 P.M.**

**Department of Health & Welfare
450 West State Street, Conference Rm. 7-A
Boise, ID**

The hearing site 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:

This chapter of rules is being rewritten to align with current federal regulations regarding the Weatherization Assistance Program in Idaho governed by the U.S. Department of Energy. The current chapter is being repealed in this Bulletin under Docket 16-0416-0801.

The following changes in this chapter will align with federal and state regulations:

1. Update eligibility criteria to reference current federal poverty guidelines, and remove of outdated income tables and limitations;
2. Align allowable expenditures;
3. Update to current standards and techniques of weatherization materials and methods;
4. Align service delivery rules with current practice for labor and monitoring, including the addition for energy audits, weatherization material standards, and lead safety activities for homes where needed; and
5. Update definitions and other required sections to meet the Administrative Procedures Act.

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 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 state general funds associated with this rulemaking. Funds for this program are provided by the U.S. Department of Energy.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rules confer a benefit and are governed by federal regulations.

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

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 October 22, 2008.

DATED this 20th day of August, 2008.

DHW - Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
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e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET 16-0416-0802

IDAPA 16
TITLE 04
CHAPTER 16

16.04.16 - WEATHERIZATION ASSISTANCE PROGRAM IN IDAHO

000. LEGAL AUTHORITY.

The Department of Health and Welfare has the authority to establish and enforce rules under Sections 56-202 and 56-203, Idaho Code, and to enter into contracts with the federal government to provide assistance to eligible individuals. This program is authorized by the U.S. Department of Energy, under Part A of the Weatherization Assistance for Low-Income Persons, 42 U.S.C. 6861-6872, and the Department of Energy Organization Act, 42 U.S.C. 1701. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 16.04.16, "Weatherization Assistance Program in Idaho." ()

02. Scope. This chapter contains rules implementing a weatherization assistance program to assist low income persons established by the U.S. Department of Energy. This program was enacted as Title IV of the Energy Conservation and Production Act, P.L. 94-385, 90 Stat. 1125 et seq., and amended by Title II, Part 2, of the National Energy and Policy Conservation Act, 42 USC 6201, et seq., 42 USC 6301, et seq., and 42 USC 6401, et seq. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho, 83720-0036 or at any of the Department's Regional Offices. ()

003. ADMINISTRATIVE APPEALS.

Appeals and proceedings for any Department actions are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." An appeal does not stay the action of the Department. ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter of rule. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

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

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

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

04. Telephone. (208) 334-5500. ()

05. Internet Website Address. Department Internet address is: <http://www.healthandwelfare.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. ()

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all public records in the custody of the Department of Health and Welfare are subject to disclosure. ()

007. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

For purposes of this chapter of rules, the following terms and abbreviations are used as defined. ()

01. Community Action Agency (CAA). A private corporation or public agency established according to the Economic Opportunity Act of 1964, 42 USC 2701, et seq., which is authorized to administer funds received from federal, state, local, or private funding entities to assess, design, operate, finance, and oversee anti-poverty programs. ()

02. Contractor. A weatherization project entity at the sub-state level which receives a contract from the Department to carry out activities of this program. ()

03. Cosmetic Items. Items which, when installed, will not reduce energy costs in a cost effective manner, such as finishes, decorative materials, elevation materials, aluminum siding, board and bat, clapboard, brick, shakes, or asphalt siding. ()

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

05. DOE. The U.S. Department of Energy. ()

06. Dwelling Unit. A house, including a stationary mobile home, an apartment, a group of rooms or a single room occupied as separate living quarters. ()

a. Rental Dwelling Unit. A dwelling unit occupied by a person who pays rent for use of the dwelling unit. ()

b. Single-Family Dwelling Unit. A structure containing no more than one (1) dwelling unit. ()

07. **Elderly Person.** A person who is sixty (60) years of age or older. ()
08. **EPA.** The U.S. Environmental Protection Agency. ()
09. **Family Unit.** All persons living together in a dwelling unit. ()
10. **Grantee.** The Idaho Department of Health and Welfare. ()
11. **Household.** All persons living together in a dwelling unit. ()
12. **Heating or Cooling Sources.** A device which raises or lowers the temperature within a dwelling unit that is part of the permanent heating, ventilating and air-conditioning system installed in the dwelling unit. Examples of a heating or cooling system are: furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air-conditioners, fans, or solar devices. ()
13. **Low-Income.** Income as it relates to family size which is: ()
- a. At or below one hundred twenty-five percent (125%) of the poverty level as determined using criteria established by the Director of the Office of Management and Budget, or a higher level has been established by the Secretary and is necessary to carry out the purpose of this part and is consistent with the eligibility criteria established for the weatherization program under Section 222(a)(12) of the Economic Opportunity Act of 1964; ()
- b. The basis on which cash assistance payments have been paid during the preceding twelve (12) month period under Titles IV and XVI of the Social Security Act, 42 USC 301, or applicable state or local law; or ()
- c. The basis for eligibility for assistance under the Low Income Home Energy Assistance Act of 1981, provided that such basis is at least one hundred and twenty-five (125) percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget. ()
14. **Mechanical Equipment.** A control device or apparatus which is primarily designed to improve the heating or cooling efficiency of a dwelling unit, and which will permanently be affixed to an existing heating or cooling source, such as flue dampers, clock thermostats, filters, and replacements limit switches. ()
15. **Occupants.** A single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements. ()
16. **Persons with Disabilities.** Any individual who is: ()
- a. Handicapped as defined in Section 7(6) of the Rehabilitation Act of 1973; ()
- b. Under a disability as defined in Section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in Section 102(7) of the Developmental Disabilities Services and Facilities Construction Act; or ()
- c. Receiving benefits under Chapter 11 or 15 of Title 38, U.S.C. ()
17. **Regional Representative.** A Regional Representative of the U.S. Department of Energy. ()
18. **Secretary.** The Secretary of the U.S. Department of Energy. ()
19. **Separate Living Quarters.** Living quarters in which the occupants do not live and eat with any other persons in the structure and have direct access from the outside of the building or through a common hall or complete kitchen facilities for the exclusive use of the occupants. The occupants may be related or unrelated persons who share living arrangements, and includes shelters for homeless persons. ()

20. Shelter. A dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. ()

21. Subgrantee. An entity managing a weatherization project which receives a grant or contract of funds awarded under this program from the Department or CAA. ()

22. Weatherization Project. A project conducted in a single geographical area which undertakes to weatherize dwelling units which are energy inefficient. ()

23. Weatherization Materials. Items used to improve the heating or cooling efficiency of a dwelling unit, such as: ()

a. Caulking and weatherstripping of doors and windows; ()

b. Furnace efficiency modifications which include replacement burners, furnaces, or boilers or any combination thereof; ()

c. Devices for minimizing energy loss through heating system, chimney, or venting devices; ()

d. Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and ()

e. Cooling efficiency modifications that include replacement air conditioners, ventilation equipment, screening and window films, and shading devices. ()

011. -- 049. (RESERVED).

050. FEDERAL REQUIREMENTS.

01. Record Keeping. Each subgrantee receiving federal financial assistance under the Weatherization Assistance Program must keep records as required by the DOE, which include the following: ()

a. Records that fully disclose the amount and disposition by subgrantee of the funds received; ()

b. The total cost of a weatherization project; ()

c. The total expenditure to implement the weatherization plan for which such assistance was given or used; ()

d. The source and amount of funds for such project or program not supplied by DOE and corresponding records; ()

e. Documentation of the average costs incurred in weatherization of individual dwelling units; ()

f. Documentation of the average size of the dwelling being weatherized; ()

g. Documentation of the average income of households receiving assistance; and ()

h. Records and documentation DOE finds necessary for an effective audit and performance evaluation as determined by the DOE Financial Assistance Rule, 10 CFR Part 600, and any requirements of 10 CFR Part 440, Direct Final Rule and EPA Title 40 Part 745.86. ()

02. Reports. Each subgrantee receiving financial assistance under the Weatherization Assistance Program must provide the Department with: ()

a. A monthly program performance report on Form EIA-29A "Low-Income Weatherization Quarterly

Report Supplement;" and ()

b. A monthly financial report on Form EIA-298 "Financial Status Report." ()

03. Matching Funds. Financial assistance under the Weatherization Assistance Program will be used to supplement, and not to supplant, local funds, and to the maximum extent practicable as determined by DOE, to increase the amounts of local funds that would be made available in the absence of federal funds provided under the Program. ()

04. Program Coordination. To the maximum extent practicable, the use of weatherization assistance must be coordinated with other federal, state, local, or privately funded programs in order to improve energy efficiency and to conserve energy. ()

051. FEDERAL REQUIREMENTS FOR LEAD SAFE PRACTICES.

To protect against lead-based paint associated risks, the federal Environmental Protection Agency (EPA) requirements under 40 CFR 745 must be followed for all homes built before 1978, with the following exclusions: ()

01. Written Determination Renovation is Lead Free. Renovations in housing in which a written determination has been made by an inspector or risk assessor (certified under either Federal regulations at 40 CFR 745.226 or a State or Tribal certifications program authorized pursuant to 40 CFR 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of one (1.0) milligrams/per square centimeter (1.0mg/cm²) or a half percent (0.5%) by weight, where the firm performing the renovation has obtained a copy of the determination. ()

02. Testing for Lead. Renovations in housing facilities in which a certified renovator, using an EPA recognized test kit as defined in 40 CFR 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of one (1.0) milligrams/per square centimeter (1.0 mg/cm²) or a half percent (0.5%) by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repaired or refinished separately. ()

03. Emergency Renovation Information Distribution. The information distribution requirements in 40 CFR 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment or property with significant damage. Emergency renovations are not exempt from the cleaning requirements of 40 CFR 745.90(a)(5), which must be performed by certified renovators or individuals trained in accordance with 40 CFR 745.90(b)(2), the cleaning verification requirements of 40 CFR 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 CFR 745.86(b)(6) and (b)(7). ()

04. Training. The training requirements in 40 CFR 745.90 and the work practice standards for renovation activities in 40 CFR 745.85 apply to all renovations performed by the Weatherization Program, except: ()

a. Renovations in housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA's renovation, repair, and painting rule. ()

b. For the purposes of Section 051 of this rule, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence. ()

052. -- 099. (RESERVED).

100. MINIMUM PROGRAM REQUIREMENTS.

01. Dwelling Units Eligible for Weatherization. A dwelling unit will be eligible under these rules if it is occupied by a family unit: ()

a. Whose income is at or below one hundred twenty-five percent (125%) of the poverty level, as specified in Section 101 of this rule, determined in accordance with criteria established by the Director of the Office of Management and Budget; ()

b. Which contains a member who had received cash assistance payments under Title IV or XVI of the Social Security Act or applicable state or local law paid during the twelve (12) months preceding the determination of eligibility for weatherization assistance, or ()

c. Is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget. ()

02. Rental Dwelling Units Eligible for Weatherization. A Subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance when: ()

a. The subgrantee has obtained the written permission of the owner or his agent; ()

b. Not less than sixty-six percent (66%) of the dwelling units in the building, or fifty percent (50%) for duplexes and four-unit buildings are eligible dwelling units, or will become eligible dwelling units within one hundred eighty (180) days under a federal, state, or local government program for rehabilitating the building or making similar improvements to the building; ()

c. The grantee has established procedures for dwellings which consist of rental units to ensure that the benefits of the weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will benefit the low-income tenants residing in such units; ()

d. For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit, including households paying for their energy through their rent, will not be subjected to rent increases unless those increases are related to matters other than the weatherization work performed. ()

e. A subgrantee may weatherize shelters and to determine how many dwelling units exist in a shelter, a subgrantee may count each 800 square feet of the shelter as a dwelling unit or it may count each floor of the shelter as a dwelling unit. ()

03. Documentation of Eligibility. No dwelling unit can be weatherized without documentation that the dwelling unit is an eligible dwelling unit. The subgrantee must determine that the family unit is eligible using as proof any of the following: ()

a. Wage stubs; ()

b. Supplemental Security Income; ()

c. Medicaid card; or ()

d. W-2 Wage and Tax Statement. ()

04. Documents Unavailable. If the documents listed in Subsections 100.03.a. through 100.03.d. of this rule are not available, the head of family must sign and date a declaration of income eligibility and provide it to the subgrantee identifying the following: ()

- a. The family unit's name; ()
- b. The family unit's address; ()
- c. Their income level, per year or month; and ()
- d. The sources from which the income is derived. ()
- e. The subgrantee must spot check the information provided on at least ten percent (10%) of the declarations received to insure eligibility. ()

05. Proof of Documentation. Copies of the proof documents are to be retained and made available by the subgrantee to the Department or its agents for inspection and audit for at least three (3) years. ()

101. POVERTY INCOME ELIGIBILITY LIMITS.

Maximum income guidelines for the weatherization program are based on guidelines established for assistance under the Low Income Home Energy Assistance Act of 1981. ()

102. -- 199. (RESERVED).

200. ALLOWABLE EXPENDITURES.

The items listed in Subsections 200.01 through 200.14 of this rule are allowable expenditures for the Weatherization Assistance Program. ()

01. Cost of Weatherization Materials. The cost to purchase and deliver weatherization materials. ()

02. Labor Costs. The following labor costs are allowable expenditures: ()

a. Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and ()

b. Payments to employ labor or to engage a contractor, particularly a nonprofit organization or a business owned by disadvantaged individuals which performs weatherization services, provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other federal or state training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors. ()

03. Transportation of Materials, Tools, and Work Crews. Transportation of weatherization material, tools, and work crews to a storage site and to the site of weatherization work. ()

04. Vehicle Maintenance, Operation, and Insurance. Maintenance, operation, and insurance of vehicles used to transport weatherization materials. ()

05. Maintenance of Tools and Equipment. ()

06. Cost of Vehicles. Purchase of any vehicle must be referred to DOE for prior approval in every instance before cost of a vehicle is allowed as an expenditure. ()

07. Employment of On-Site Supervisory Personnel. ()

08. Incidental Repairs. The cost of incidental repairs if such repairs are necessary to make the installation of weatherization materials effective. ()

09. Cost of Liability Insurance. The cost of liability insurance for weatherization projects for personal injury and for property damage; ()

10. Low-Cost Weatherization Activities. The cost of carrying out low-cost/no-cost weatherization activities in accordance with 10 CFR Part 440.20. ()

11. Financial Audits. The cost of weatherization program financial audits as required by 10 CFR Part 440.23(d). ()

12. Administrative Expenses. Allowable administrative expenses under 10 CFR Part 440.18(d). ()

13. Leveraging Activities. Funds used for leveraging activities in accordance with 10 CFR Part 440.14(b)(9)(xiv). ()

14. Elimination of Health and Safety Hazards. The cost of eliminating health and safety hazards, elimination of which is necessary before, or because of, installation of weatherization materials. ()

15. Limitations. No grant funds are awarded under the Weatherization Assistance Program when used for any of the following purposes: ()

a. To install or otherwise provide weatherization materials for a dwelling unit which has been weatherized previously with grant funds authorized under these rules, except as provided under 10 CFR Part 440.20 low-cost or no-cost weatherization activities. If such dwelling unit has been damaged by fire, flood, or an act of God; and repair of the damage to weatherization materials is not paid for by insurance the Weather Assistance Program may award funds for repair. ()

b. To weatherize a dwelling unit which is vacant or designated for acquisition or clearance by a federal, state, or local program within twelve (12) months of the date weatherization of the dwelling unit would be scheduled to be completed. ()

c. Dwelling units partially weatherized under 10 CFR Part 440 or under other federal programs during the period of September 30, 1975, through September 30, 1993, may receive further financial assistance for weatherization under 10 CFR Part 440. These homes must be reported separately, but may be counted as completions for the purposes of compliance with the per-home expenditure limit in 10 CFR Part 440.18. Each dwelling unit must receive a new energy audit which takes into account any previous energy conservation improvements to the dwelling. ()

d. Cosmetic items as defined in Section 010 of these rules. ()

16. Additional Funds. Additional funds for administration, tools, and transportation of materials, work crews, and equipment to work sites can be allocated by the Department on the basis of need and availability. ()

201. LOW-COST OR NO-COST WEATHERIZATION ACTIVITIES.

01. Low or No Cost Weatherization Activities. An eligible dwelling unit may be weatherized without regard to the limitations contained in 10 CFR Part 440.18 (e)(2) or Section 440.21(b) from funds designated by the grantee for carrying out low-cost or no-cost weatherization activities provided. ()

a. Inexpensive weatherization materials are used, such as water flow controllers, furnace or cooling filters, or items which are primarily directed toward reducing infiltration, including weatherstripping, caulking, glass patching, and insulation for plugging; and ()

b. No labor paid with funds provided under 10 CFR Part 440 is used to install weatherization materials referred to in paragraph (a)(1) of this section. ()

02. Maximum Amount for Low or No Cost Weatherization Activities. A maximum of ten percent (10%) of the amount allocated to a subgrantee, not to exceed \$50 in materials costs per dwelling unit, may be

expended to carry out low-cost or no-cost weatherization activities, unless the DOE Regional Representative approves a higher expenditure per dwelling unit. ()

202. -- 299. (RESERVED).

300. WEATHERIZATION MATERIALS STANDARDS AND ENERGY AUDIT PROCEDURES.

01. Approved Weatherization Materials. Only weatherization materials which meet or exceed standards prescribed in Appendix A to 10 CFR Part 440 may be purchased. However, unlisted materials may be approved by the state upon application from any CAA. Such application must be made to DOE by the state. ()

02. Cost Effective Materials. Except for materials to eliminate health and safety hazards allowable under 10 CFR Part 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. ()

03. Energy Audit. The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to 10 CFR Part 440. ()

301. -- 499. (RESERVED).

500. OVERSIGHT, TRAINING, AND TECHNICAL ASSISTANCE.

01. Audit Frequency. The Department will ensure that audits by or on the behalf of subgrantees are conducted with reasonable frequency, on a continuing basis, or at scheduled intervals, usually annually, but not less frequently than every two years, in accordance with 10 CFR Part 600, and OMB Circular 110, Attachment F, as applicable. ()

02. Monitoring. The Department, as grantee for the U.S. Department of Energy Weatherization Assistance Grants, will monitor and evaluate the operation of projects carried out by the subgrantees through on-site inspections and other means to insure the effective provision of weatherization assistance in a nondiscriminatory manner for dwelling units of low-income residents of the State of Idaho. ()

501. -- 999. (RESERVED).