

Dear Senators LODGE, Broadsword & LeFavour, and
Representatives BLOCK, Nielsen & Rusche:

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

IDAPA 16.04.14 - Rules Governing Low Income Home Energy Assistance Program
(Docket No. 16-0414-0901).

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
11-13-09. 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 12-11-09.

_____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 26, 2009

SUBJECT: Department of Health and Welfare - IDAPA 16.04.14 - Rules Governing Low Income Home Energy Assistance Program (Docket No. 16-0414-0901) (Temporary and Proposed)

According to the Department, the temporary and proposed rule contained in Docket No. 16-0414-0901 (hereinafter “amended rule”) is authorized pursuant to section 56-202, Idaho Code, and by 42 U.S.C. sections 8621 to 8629, the Low-Income Energy Assistance Act of 1981. Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority. The Department has provided copies of portions of this Act, directing attention to 42 U.S.C. sections: 8622(11), the definition of “state median income;” and 8624(b)(2)(B), the requirement that states make payments only to households with incomes that do not exceed specified limits. Not cited as authority is section 56-203(b), Idaho Code, which requires the Department to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services.

The purpose of the rule, according to the Department, is to exercise the state option of using 60% of the federally-established state median income to determine income eligibility for the Low Income Home Energy Assistance Program (LIHEAP). The Department also states that the proposed rule will also exclude child support income as countable income in order to align with the Community Services Block Grant Program and the DOE’s Weatherization Assistance Program and thus reduce administrative overhead, reduce errors and better serve those in need.

The Governor’s justifications for the amended rule is that “with the increased funds for this program, more low-income families will benefit from this safety net by creating more economic stability through subsidizing their home heating costs.” Translated, this meets the

statutory requirement under section 67-5226(1)(c), Idaho Code, of “conferring a benefit.” The temporary rule went into effect on September 1, 2009.

The Department does not state whether the amended rule will impose or increase a fee or charge. There is no impact to the General Fund, since LIHEAP is a 100% federally funded program. The Department further discloses that this rulemaking increases LIHEAP eligibility income limits to 60% of the 2009 Idaho state median income and adds child support income to the list of income not counted. This will result in a 20% increase (an approximate increase of 6,460 families to the 45,000 families receiving this benefit last year). The average cost per family is estimated to be \$386 annually. To accommodate this increase, the benefit is being reduced by \$50 to \$336 annually. The Department states that negotiated rulemaking was not conducted because the rulemaking is governed by federal law and confers a benefit.

The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or an agency, not later than October 21, 2009. The Department states that all written comments must be delivered to the Department on or before October 28, 2009.

ANALYSIS

The proposed rule does exactly what the Department advertised by limiting participation to those households with countable income at or below 60% of the state’s median income estimate as defined by federal law, section 151, and by adding child support income to the list of income not counted in determining LIHEAP eligibility or benefit level, section 151.01.t.

SUMMARY

The Department has broad rulemaking authority in the area of public assistance under section 56-202(b), Idaho Code. Section 56-203(b) provides additional authority.

cc: Department of Health and Welfare
Tamara Prisock and Chris Baylis

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.14 - RULES GOVERNING THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

DOCKET NO. 16-0414-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2009.

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 42 U.S.C. Sections 8621 to 8629, also known as the Low Income Home Energy Assistance Act of 1981.

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 October 21, 2009.

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:

Last year federal statute mandated that states use 160% of the 2009 Federal Poverty Guidelines (FPG) for the Low Income Home Energy Assistance Program (LIHEAP) income eligibility determination. States were also mandated to return to 150% of FPG for federal fiscal year 2010 or to use 60% of the federally-established Idaho State Median Income. This rule change will use 60% of State Median Income.

This rule change will also exclude child support income as countable income. This aligns the LIHEAP program with the Community Services Block Grant Program and the U.S. Department of Energy's Weatherization Assistance Program. Many of the same families who apply and are eligible for the LIHEAP program would benefit from the programs offered by the Community Services Block Grant program and Weatherization. Aligning income eligibility criteria across these programs reduces administrative overhead, reduces error, and better serves those most in need in our communities.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

With the increased funds for this program, more low-income families will benefit from this safety net by creating more economic stability through subsidizing their home heating costs.

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:

This rulemaking increases the LIHEAP eligibility income limits to 60% of the 2009 Idaho State Median Income and adds child support income to the list of income not counted. This will result in approximately 6,460 more families being eligible for LIHEAP, an increase of approximately 20%. Last year, approximately 45,000 families received LIHEAP benefits, with the average benefit for each family being \$386 annually. To accommodate the increased number of eligible families, the benefit amount for each case will be decreased by approximately \$50, to about \$336 annually. The LIHEAP program is 100% federally-funded and does not spend any state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules confer a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Chris Baylis at (208) 334-5742.

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 October 28, 2009.

DATED this 14th day of August, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0414-0901

151. INCOME ELIGIBILITY REQUIREMENTS.

Under 42 U.S.C. 8624(b)(2)(B)(ii), Assistance under this program is limited to participant households with countable income at or below *one hundred fifty percent (150%) of the Poverty Guidelines updated annually in the Federal Register by the US Department of Health and Human Services under the authority of 42 U.S.C. 9902(s), effective at the beginning of each program year sixty percent (60%) of Idaho's "State Median Income Estimate."* State median income is defined in 42 USC 8622(11). The federal "State Median Income Estimate" for Idaho is found at http://www.acf.hhs.gov/programs/ocs/liheap/guidance/information_memoranda/im09-05.html. Participant households must provide proof of income for all members during the application process. ~~(3-15-02)~~(9-1-09)T

01. Income Not Counted. Income listed in Subsections 151.01.a. through 151.01.v. is not counted in determining LIHEAP eligibility or benefit level. All other income is counted in determining LIHEAP eligibility and benefit level. (3-15-02)

- a.** Benefit payments from Medicare Insurance. (4-5-00)
- b.** Private loans made to the participant or the household. (4-5-00)
- c.** Assets withdrawn from a personal bank account. (4-5-00)
- d.** Sale of real property, if the funds are reinvested within three (3) calendar months. (3-15-02)
- e.** Income tax refunds. (4-5-00)
- f.** Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than thirty dollars (\$30) during the three (3) month period before application for LIHEAP. (4-5-00)
- g.** Wages or allowances for attendant care when the attendant resides in the household of the disabled member. (4-5-00)
- h.** Interest income of thirty dollars (\$30) or less received during the three (3) month period before application for LIHEAP. (4-5-00)
- i.** Legal fees or settlements from Workman's Compensation paid in a lump sum. (4-5-00)

- j.** Monies received for educational purposes from NSDL, College work-study programs, State Student Incentive grants, SEOG, Pell, Guaranteed Student Loans and Supplemental grants funded under Title IV, A-2. (3-15-02)
- k.** Monies from VA-GI Bill for Education. (4-5-00)
- l.** Department of Health and Welfare Adoption subsidies. (4-5-00)
- m.** Compensation provided volunteers in the Older American Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, Title V Senior Employment Program. (4-5-00)
- n.** Third party payments made by a non-household member on behalf of the household. Third party payments include child care, energy assistance funds, shelter, food and clothing assistance. (4-5-00)
- o.** Value of food stamps or donated food to household. (4-5-00)
- p.** Utility allowance. (4-5-00)
- q.** TAFI lump sum payments. (3-15-02)
- r.** Tribal crop or land payments. (3-15-02)
- s.** AmeriCorps stipend. (3-15-02)
- t.** Child support income. (9-1-09)T
- 02. Income Received Monthly.** To determine LIHEAP eligibility and benefit amount, when participant household income is received at least monthly, use the three (3) month's income prior to the date of application. (4-5-00)
- 03. Income Received Less Often Than Monthly.** For household income received less often than monthly convert the income into a three (3) month amount: (4-5-00)
- a.** Multiply income received weekly by twelve and nine tenths (12.9). (4-5-00)
- b.** Multiply income received every two (2) weeks by six and forty-five hundredths (6.45). (4-5-00)
- c.** Multiply income received twice each month by six (6). (4-5-00)
- 04. Seasonal and Self-Employment Income.** For households with seasonal or self-employment income divide the annual income by four (4). (4-5-00)
- 05. Treatment of Undocumented Resident Income.** If a household includes eligible and ineligible undocumented resident participants, and one (1) or more of the ineligible participants had income during the reporting period, count the ineligible participants' income and exclude the undocumented resident from the household count. (3-15-02)