

Dear Senators ANDREASON, Coiner & Malepeai, and
Representatives SCHAEFER, Marriott & Ringo:

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

28.02.03 - Rules of the Idaho Regional Travel & Convention Grant Program

(Docket #28-0203-0901) Chapter Repeal

28.02.03 - Rules of the Idaho Regional Travel & Convention Grant Program

(Docket #28-0203-0902) 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 10-26-09. 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 11-24-09.

_____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: Germane Subcommittees for Administrative Rules Review of the Senate and House of Representatives Commerce and Human Resources Committees

FROM: Research and Legislation Staff, Nugent

DATE: October 6, 2009

SUBJECT: Two Sets of Department of Commerce Rules:
28.02.03 - Rules of the Idaho Regional Travel & Convention Grant Program (Docket #28-0203-0901) Chapter Repeal
28.02.03 - Rules of the Idaho Regional Travel & Convention Grant Program (Docket #28-0203-0902) Chapter Rewrite

The Department of Commerce is proposing two rulemaking dockets as temporary and proposed rules to: (1) first repeal its Idaho Regional Travel and Convention Grant Program and (2) to enact rules to cover the same subject matter area. In effect, the temporary and proposed rules are a recodification of the existing rules and are within the Department's statutory authority. One suggestion we might make is to have the repeal and the reenactment or recodification appear in the same Docket. It will save the Department some money and if there is confusion if the repeal docket is a later Docket (this one is not) the argument could be raised that the repealer repealed the new rule.

Other than this minor comment, we do not have any substantive, procedural or technical concerns with the temporary and proposed rules.

cc: Department of Commerce
Karen Ballard & Cathy Bournier

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 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 67-4715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than 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: This rulemaking will repeal this chapter of rules. The rules are being rewritten under Docket No. 28-0203-0902.

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: This chapter of rules is being repealed and rewritten to allow the Idaho Travel Council the flexibility to advise and execute the travel grant program, which will confer a benefit on non-profit organizations with travel and convention programs applying for an Idaho Travel Council Regional Travel and Convention Promotion grant.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, 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: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cathy Bourner, Grant Analyst, (208) 334-2470, ext. 2153.

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 28th day of August, 2009.

Karen Ballard
Division of Tourism Administrator
Idaho Department of Commerce
700 W. State St.

P. O. Box 83720
Boise, ID 83720-0093
Phone: (208) 334-2470, ext. 2100
Fax: (208) 334-2631

IDAPA 28.02.03 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-0902 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 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 67-4715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than 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:

This rulemaking is a complete rewrite of this chapter of rules. The rules are being repealed under Docket No. 28-0203-0901. This rewrite of the Idaho Travel Council's (ITC) Regional Travel and Convention Grant program is an attempt to refine the administrative rules currently in place, allowing for more flexibility in the ITC's ability to administer the program. Presently, the rules contain administrative details that require legislative action to modify or update. This rewrite will redefine these details as rules subject to ITC approval, and alleviate the necessity for legislative action to make minor changes in the grant program. There is no intent to remove legislative oversight of the program or dilute any existing rules insofar as they provide a framework for the distribution of grant funds. In fact, there are some additions being made to the existing rules which clarify legislative intent. Due to the extent of the changes being made, and in consideration of the expenses that would be incurred in making such extensive changes, the ITC determined a repeal and rewrite of the rules was most appropriate.

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:

This chapter of rules is being repealed and rewritten to allow the Idaho Travel Council the flexibility to advise and execute the travel grant program, which will confer a benefit on non-profit organizations with travel and convention programs applying for an Idaho Travel Council Regional Travel and Convention Promotion grant.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, 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: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cathy Bournier, Grant Analyst, (208) 334-2470, ext. 2153.

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 28th day of August, 2009.

Karen Ballard
Division of Tourism Administrator
Idaho Department of Commerce
700 W. State St.
P. O. Box 83720
Boise, ID 83720-0093
Phone: (208) 334-2470, ext. 2100
Fax: (208) 334-2631

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 28-0203-0902

IDAPA 28
TITLE 02
CHAPTER 03

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

000. LEGAL AUTHORITY.

These rules have been adopted pursuant to Sections 67-4715, 67-4717, and 67-4718, Idaho Code, which imposes a two percent (2%) tax on the sale of hotel/motel and private campground accommodations and created the Idaho Travel and Convention Industry Committee, herein referred to as the Idaho Travel Council (ITC). The revenues generated by this tax (less ten percent (10%) administrative expense) are to be invested one-half (1/2) by the state and one-half (1/2) by the local regions within Idaho in well-planned promotional programs. The ITC, through the Idaho Department of Commerce (Department), has been given the responsibility of administering this program which includes the local regional grant program. (8-1-09)T

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 28.02.03, "Rules of the Idaho Regional Travel and Convention Grant Program" (ITC Grant Program). (8-1-09)T

02. Scope. The primary objective is the creation and implementation of plans designed to stimulate and expand the travel and convention industry within the state's seven (7) planning regions. (8-1-09)T

002. WRITTEN INTERPRETATIONS.

In accordance with Sections 67-5201(19)(b)(iv), 67-4715, 67-4717 and 67-4718, Idaho Code, this agency has written statements which 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 Idaho Department of Commerce, 700 West State Street, Boise, Idaho. (8-1-09)T

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. (8-1-09)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (8-1-09)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The central office for the Idaho Travel Council Grant Program is located at the Idaho Department of Commerce. The office is open daily from 8 a.m. and 5 p.m., except Saturday, Sunday, and legal holidays. Appropriate ITC grant program documents may be filed at, or mailed to: Idaho Travel Council Grant Program, Idaho Department of Commerce, 700 West State Street, P. O. Box 83720, Boise, Idaho 83720-0093. (8-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Information regarding ITC applications or awarded grants are considered to be public information and will be released upon request. These documents are available for public inspection and copying at cost. (8-1-09)T

007. - 009. (RESERVED)

010. DEFINITIONS.

As used in this chapter: (8-1-09)T

01. Council. The Idaho Travel Council (ITC) as set forth in Section 67-4712, Idaho Code. (8-1-09)T

02. Division of Tourism. The staff of the Division of Tourism Development unit of the Idaho Department of Commerce. (8-1-09)T

03. Department. The Idaho Department of Commerce as set forth in Section 67-4701, Idaho Code. (8-1-09)T

04. Grant Program Guidelines. Interpretation of these rules by the Idaho Travel Council. (8-1-09)T

011. PROGRAM INTENT.

The intent of the ITC's Regional Grant Program is to distribute grant funds to non-profit, incorporated organizations which have in place a viable travel or convention promotion program, or both, in their area of operation. Preference is given to programs of Destination Marketing Organizations (DMOs) with a primary focus of promoting overnight visitation in their area. (8-1-09)T

012. GRANT AWARD SCHEDULE.

01. Application Deadlines. Grants will be awarded annually at the first ITC meeting of the fiscal year, approximately August 1. A schedule of application deadlines will be posted on the Department's website and is available by request from the Division of Tourism. (8-1-09)T

02. Grant Award Status. Applicants will be notified of their grant award status within seven (7) days of the ITC's grant award date. (8-1-09)T

03. Grant Cycle. Grant cycle is approximately fourteen (14) months, beginning with the ITC's grant award date and ending on September 30 of the following year. Funded activities should be completed within the fourteen (14) month cycle. (8-1-09)T

013. DISTRIBUTION OF FUNDS.

The Idaho Regional Travel and Convention Grant is a reimbursement grant. (8-1-09)T

01. Documentation of Funds Expended. The Department will allocate funds to the grantee upon submission of complete documentation of funds expended. (8-1-09)T

02. Documentation of Reimbursable Expenses. Documentation for reimbursable expenses will be determined by the Department and the ITC as outlined in the guidelines. (8-1-09)T

014. NON-PROFIT STATUS.

If not already on file with the Department, grant applicants must provide the following documents as proof of non-

profit status prior to or with their application. (8-1-09)T

01. Proof of Non-Profit Status. State of Idaho Certificate of Incorporation and Articles of Incorporation from the Secretary of State or a letter of determination from the Internal Revenue Service. (8-1-09)T

02. Employer Identification Number. Notice of Employer Identification Number assigned by the Internal Revenue Service. (8-1-09)T

015. POTENTIAL CONFLICT OF INTEREST.
An affiliation with a profit-making organization could imply a conflict of interest. Such conflict could render the application ineligible. (8-1-09)T

016. CATEGORIES OF APPLICANTS.
The area of impact of the non-profit applicant will determine the application type as follows: (8-1-09)T

01. Local/Regional Grant Application. A non-profit organization whose area of impact lies within the boundaries of a single region. (8-1-09)T

a. Regional applicants serve as an umbrella organization, promoting travel to locations throughout the region. (8-1-09)T

b. Tourism regions are defined in Section 67-4711, Idaho Code. (8-1-09)T

02. Multi-Regional Application. A non-profit organization that represents more than one (1) region or has a presence in each region of the state. The association serves as an umbrella organization, promoting travel to locations throughout the state. (8-1-09)T

017. ELIGIBLE PROJECTS.
Eligible projects under the Regional Travel and Convention Grant Program must be consistent with the legislative declaration of policy in Title 67, Chapter 47, Idaho Code. Programs that are eligible for consideration must fall under the basic definition of travel or convention promotion. (8-1-09)T

018. INELIGIBLE PROJECTS.
It is not the purpose of this grant program to fund the day-to-day, administrative expenses of organizations that have a travel or convention promotion element. (8-1-09)T

01. Organizational Administrative Expense. Rent, phone, supplies, wages and salaries, other overhead and administrative expenses are not reimbursable; however, the actual cost of staff wages and benefits (Other Personnel Expenses (OPE)) may be used as cash match with documentation. (8-1-09)T

02. Salary or Personnel. Expenses related to grant writing are not eligible. (8-1-09)T

03. Alternative Funding Sources. Projects that have alternative funding sources (for example, regular Chamber of Commerce budgets) or that have been funded previously with the agency's own funds may be deemed ineligible. (8-1-09)T

019. LOCAL EVENTS.
It is not the intent of the Council to fund the promotion of local events. However, the Council will consider the unique benefits of events that have the potential of having a measurable impact on consumer travel and spending patterns. Such requests for funding will be judged on their specific merits. (8-1-09)T

020. REPETITIVE FUNDING OF PROJECTS.
The Council may fund repetitive projects. However, applicants should not conclude that a plan will be funded because it has been funded in the past. When a previously funded plan is resubmitted, the applicant should show the return on investment as it relates to ITC program intent. (8-1-09)T

021. PROGRAM CREDIT.

All projects funded by the Idaho Regional Travel and Convention Grant Program must credit said program as determined appropriate by the ITC. (8-1-09)T

022. GRANT ADMINISTRATION GUIDELINES.

01. Noncompliance with Guidelines. Noncompliance with administrative guidelines may lead to grant termination or omission from future grant awards, or both. (8-1-09)T

02. Usage of Funds. Applicant must agree that funds will be used in accordance with ITC grant contract and guidelines, including: (8-1-09)T

- a.** Submitting narrative progress reports according to contract schedule; (8-1-09)T
- b.** Using appropriate forms with accompanying documentation; (8-1-09)T
- c.** Abiding by subcontract procedures in the guidelines; and (8-1-09)T
- d.** Providing complete audit documentation when applicable. (8-1-09)T

023. ADHERENCE TO STATE LAWS AND REGULATIONS.

01. Applicable Laws and Regulations. The applicant must agree to use the grant funds in accordance with all applicable state laws and regulations relative to purchasing, fiscal, and audit requirements. (8-1-09)T

02. Sales Tax. Receipt of an ITC grant does not exempt an organization from paying sales tax. (8-1-09)T

024. AUDIT REQUIREMENT.

Grantees who receive one hundred thousand dollars (\$100,000) or more in grant funds must have an audit. The audit must be performed by a Certified Public Accountant and submitted to the Department within sixty (60) days following the close of the grant cycle. The Council may also require an audit for grants less than one hundred thousand dollars (\$100,000). Estimated audit costs must be included in the grant application. Audits are exempt from match requirements. (8-1-09)T

025. -- 199. (RESERVED).

200. APPLICANT ORGANIZATIONAL REQUIREMENTS.

Applicants for this grant program must show in their application that they have: (8-1-09)T

01. Plan. A goal-oriented plan for travel or convention promotion, or both, with measurements appropriate to the scope of work. (8-1-09)T

02. Resources. Adequate resources to: (8-1-09)T

- a.** Carry out the plan as outlined in the grant application; and (8-1-09)T
- b.** Operate and maintain a financial management system for the plan. (8-1-09)T

03. Ability to Manage. The ability to manage the grant. (8-1-09)T

201. MATCHING FUNDS.

Match must be documented in the application. (8-1-09)T

01. Match Required. The Idaho Regional Travel and Convention Grant Program requires match from all organizations applying for funding as a way to increase the regional or local commitment to the plan, and to assist in generating more dollars for tourism promotion. (8-1-09)T

02. Match Percentage. All plans must provide cash match of twelve and one-half percent (12.5%) of the amount awarded. All match must be outlined in the scope of work within the grant application. Audits are exempt from match requirements. (8-1-09)T

03. Match Definition. Match is defined in the guidelines, but is considered documented cash contributions, wages and benefits or income used to fund a project. (8-1-09)T

04. Expenditures. Expenditures claimed for projects funded previously by the grantee, such as brochures and publications, will not be allowed as match. (8-1-09)T

05. Marketing. Marketing dollars spent by a for-profit enterprise within their marketing program may not be claimed as cash match by a grantee, not to exclude approved co-op programs. (8-1-09)T

06. Audits. Funds awarded for audits are exempt from match requirements. (8-1-09)T

202. -- 220. (RESERVED).

221. GRANT APPLICATION PROCESS.

01. Meeting with Regional ITC Representative. A meeting with the regional ITC representative to discuss grant application is strongly encouraged. (8-1-09)T

02. Idaho Travel Council Presentation. Applicants for grants of fifty thousand dollars (\$50,000) or greater are strongly encouraged to present their travel and convention plan at the final ITC meeting of the fiscal year. Applicants for grants of less than fifty thousand dollars (\$50,000) may present their grant application at the same meeting. (8-1-09)T

03. Grant Application. Grant applications must be submitted on-line through the Department website www.tourism.idaho.gov. Submittal deadline will be determined by the Division of Tourism and posted on the Division website. (8-1-09)T

04. Technical Review. The following criteria are considered in the review of the application: (8-1-09)T

- a.** Application Completeness - Scope of work and budget filled out correctly. (8-1-09)T
- b.** Cash Match - Potential sources identified. (8-1-09)T
- c.** Commitment - Evidence the plan has local/regional support. (8-1-09)T
- d.** Fiscal Competency - Presence of an adequate financial management system. (8-1-09)T
- e.** Need - Addresses identified needs of the travel economy in the impacted region. (8-1-09)T
- f.** Regional Impact - Will increase local/regional awareness, encourage visitors to stay longer, or promote intra-regional travel. (8-1-09)T
- g.** Continuing Benefits - Plan has benefits beyond the grant cycle. (8-1-09)T
- h.** Plan Design - Achieving goals and objectives within a reasonable time frame. (8-1-09)T
- i.** Innovation. (8-1-09)T
- j.** Evaluation - Plan demonstrates a sound methodology for measuring achievement of the stated project objectives. (8-1-09)T
- k.** Cost Analysis - Applicant shows evidence that other resources are not available to support the plan

fully, and requested funds are sufficient to accomplish plan objectives. (8-1-09)T

222. GRANT AWARD.

The ITC is responsible for the selection of applications to be awarded ITC Grants. Once the ITC has selected plans to be funded, the Department will notify all applicants, by letter, of their funding status. (8-1-09)T

01. Term of Contract. All contracts will be in effect for a period of no more than fourteen (14) months unless otherwise stipulated in the contract. (8-1-09)T

02. Special Conditions. If applicable, special conditions of funding will be outlined. (8-1-09)T

03. Effective Date. The grant will take effect upon the date of award. Grant monies cannot be obligated or expended until that date. (8-1-09)T

04. Reimbursement. No expenditures can be reimbursed until the contract is signed by the Director of the Department or his designee. (8-1-09)T

223. EXTENSIONS AND AMENDMENTS.

Extensions and amendments to ITC approved grants are discouraged. However, if the grantee can offer a compelling reason why more time is needed to complete the approved plan, or if a suitable opportunity requiring a change to the scope of work becomes available, an extension of the grant year or amendment to the approved plan or budget may be requested. (8-1-09)T

01. Extensions. An extension of up to three (3) months may be obtained from the grant manager with the Division of Tourism. However, if the grantee requires additional time to complete approved projects, beyond the three (3) months, the request will be reviewed by the ITC and must receive a majority vote of the members in order for the extension to be allowed. (8-1-09)T

02. Amendments. If the scope of any element changes or a budget shift in excess of limits set by the Council in the guidelines is requested, it will be reviewed by the ITC and must receive a majority vote of the members in order for the amendment to be allowed. (8-1-09)T

224. GRANT TERMINATION.

01. Plan, Project or Organization Loses Viability. If at any time a travel and convention promotion plan or project loses its viability, or the organization awarded the grant ceases to actively function, the grant may be terminated. This determination will be made by the ITC, the Division of Tourism staff, and may include the grantee. If such a decision is made, the Department will terminate the plan or project and the funds will be reverted to the regional pool for the next cycle grant awards. (8-1-09)T

02. Conflict of Interest. If at any time the Council becomes aware of an apparent or potential conflict of interest between a grantee and a private entity which may influence grant funds, the Council may request a meeting with the grantee's representatives. The Council may, at that meeting, terminate the grant if an inappropriate conflict of interest is found. (8-1-09)T

03. Inappropriate Use of Funds. If at any time the Council becomes aware of a grantee's inappropriate or illegal use of grant funds, or inappropriate request for reimbursement, the Council may request a meeting with the grantee's representatives. The Council may, at that meeting, terminate the grant if impropriety is found. (8-1-09)T

225. -- 999. (RESERVED).