

**STATE AFFAIRS COMMITTEE**  
**ADMINISTRATIVE RULES REVIEW**  
*Table of Contents*  
**2013 Legislative Session**

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION**

*31.41.01 - Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission (The Telephone Customer Relations Rules)*  
Docket No. 31-4101-1201 .....2

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

*38.04.06 - Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities*  
Docket No. 38-0406-1202 (New Chapter) .....7

*38.04.07 - Rules Governing Use Of The Interior of State Property in The Capitol Mall and Other State Facilities*  
Docket No. 38-0407-1202 (New Chapter) .....21

*38.04.08 - Rules Governing Use of Idaho State Capitol Exterior*  
Docket No. 38-0408-1202 (New Chapter) .....31

**IDAPA 52 - IDAHO STATE LOTTERY**

*52.01.02 - Gaming Rules of the Idaho State Lottery Commission*  
Docket No. 52-0102-1201 .....47

*52.01.03 - Rules Governing Operations of the Idaho State Lottery*  
Docket No. 52-0103-1202 .....51

Docket No. 52-0103-1203 .....68

**IDAPA 54 - OFFICE OF THE STATE TREASURER**

*54.03.01 - Idaho Unclaimed Property Administrative Rules*  
Docket No. 54-0301-1201 .....78

## IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

### 31.41.01 - CUSTOMER RELATIONS RULES FOR TELEPHONE CORPORATIONS PROVIDING SERVICES IN IDAHO SUBJECT TO CUSTOMER SERVICE REGULATION BY THE IDAHO PUBLIC UTILITIES COMMISSION (THE TELEPHONE CUSTOMER RELATIONS RULES)

DOCKET NO. 31-4101-1201

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 61-507, 61-515, 62-605(5)(b), and 62-622(5), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the temporary and proposed rule was published in the September 5, 2012 Idaho Administrative Bulletin, [Volume 12-9, pages 164 through 166](#).

**FEE SUMMARY:** There are no fees associated with this proposed rulemaking. N/A

**FISCAL IMPACT:** There is no fiscal impact on the state general fund resulting from this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Weldon B. Stutzman, Deputy Attorney General, at (208) 334-0318.

DATED this 14th day of November, 2012.

Jean D. Jewell, Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington  
Boise, Idaho 83702-5918

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is **July 3, 2012**.

**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 61-515, 62-605(5)(b), and 62-622(5), 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 September 19, 2012.

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 IPUC adopted changes to IDAPA 31.41.01.502, effective July 3, 2012, by approving a stipulation signed by IPUC Staff and telephone companies affected by the rule. The proposed change was initiated by the telephone companies who face competitive pressures that did not exist in 1993 when the rule was promulgated. The rule change increases time to restore service when outages occur, eliminates penalty payments, and eliminates automatic reporting requirements. Particular references to Rule 502 in Rule 500 and Rule 501 are deleted to coincide with the changes to Rule 502.

**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:

The change to IDAPA 31.41.01.502 confers an economic benefit on telephone companies who currently face competition in local telephone markets. The rule change (a) increases time to restore service when outages occur, (b) eliminates penalty payments, and (c) eliminates automatic reporting requirements. Adopting the rule change as temporary allows benefit to be immediately effective.

**FEE SUMMARY:** There are no fees associated with this proposed rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on the state general fund resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted through a public workshop on April 30, 2012, and by written comments received by electronic mail. Members of the public and representatives of at least twelve (12) telecommunications companies participated in the informal negotiated rulemaking process.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weldon B. Stutzman, Deputy Attorney General, at (208) 334-0318.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before September 26, 2012.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 20th day of July, 2012.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-4101-1201**

**500. QUALITY OF SERVICE (RULE 500).**

**01. Service Standards.** Each telephone company providing local exchange service pursuant to Title 61 or Title 62, Idaho Code, as applicable, and each eligible telecommunications carrier (ETC) is required to employ prudent management and engineering practices to ensure that customers receive the best quality of service practicable. Each telephone company is required to adopt and pursue a maintenance program aimed at achieving efficient operation of its systems to render safe, adequate and uninterrupted service. These programs must include guidelines for keeping all plant and equipment in good repair, including the following: (3-29-10)

**a.** Broken, damaged or deteriorated equipment must be promptly repaired or replaced; and (7-1-93)

**b.** Transmission problems (including induction, cross-talk, or other poor transmission on any line) must be promptly corrected when located or identified. (7-1-93)

**02. Service Outage.** If a customer's local telephone service quality deteriorates to such an extent that the customer cannot make local calls or cannot receive local calls or cannot use the service for voice grade communication because of cross-talk, static or other transmission problem, the telephone company must respond to a customer's report of such a "service outage" in accordance with Rule 502. *Customer's bills must be appropriately and automatically credited pursuant to the terms of Rule 502.* (3-29-10)()

**501. RESPONSE TO SERVICE OUTAGE (RULE 501).**

**01. Receipt and Recording of Reports.** Each telephone company providing local exchange service shall provide for the receipt of customer trouble reports at all hours and make a full and prompt investigation of and response to all reports. The telephone company shall maintain an accurate record of trouble reports made by its customers. This record shall include accurate identification of the affected customer or service, the time, date and nature of the report, the action taken to clear the trouble or satisfy the customer, and the date and time of trouble clearance or other disposition. This record shall be available to the Commission or its authorized representatives upon request at any time within two (2) years of the date of the record. (3-29-10)

**02. Repair Commitments.** Commitments to customers for repair service shall be set in accordance with Rule 502. Each telephone company shall make every reasonable attempt to fulfill repair commitments to customers. Customers shall be timely notified of unavoidable changes. ~~Failure to meet a repair commitment does not relieve the telephone company of the credit provisions in Rule 502.01, unless the customer fails to keep an appointment the customer agreed to when the original commitment was made.~~ (3-29-10)( )

**502. REPAIR SERVICE STANDARDS (RULE 502).**

**01. Restoration of Service.** When a telephone company providing local exchange service is informed by a customer of a service outage as described in Rule 500.02, the telephone company must restore service within forty-eight (48) hours after the report of the outage, except: (3-29-10)( )

**a.** ~~Restore service within sixteen (16) hours after the report of the outage if the customer notifies the telephone company that the service outage creates an emergency for the customer; or~~ For outages reported on Thursday, the company must restore service no later than the following Monday by 6 p.m.; and (7-1-93)( )

**b.** ~~Restore service within twenty four (24) hours after the report of the outage if no emergency exists, except that outages reported between noon on Saturday and 6 p.m. on the following Sunday must be restored within forty eight (48) hours or by 6 p.m. on the following Monday, which ever is sooner. If the telephone company does not restore service within the times required by this Rule the telephone company must credit the customer's account for an amount equal to the monthly rate for one (1) month of basic local exchange service.~~ For outages reported on Friday, Saturday or Sunday, the company must restore service no later than the following Tuesday by 6 p.m. (7-1-93)( )

**02. Extenuating Circumstances.** Following disruption of telephone service caused by natural disaster or other causes not within the telephone company's control and affecting large groups of customers, or in conditions where the personal safety of an employee would be jeopardized, the telephone company is *not* required to ~~provide the credit referred to in Rule 502.01 as long as it~~ uses reasonable judgment and diligence to restore service, giving due regard for the needs of various customers. When a customer causes the customer's own service outage or does not make a reasonable effort to arrange a repair visit within the service restoration deadline, or when the telephone company determines that the outage is attributable to the customer's own equipment or inside wire, the telephone company is not required to ~~provide to that customer the~~

~~credit referred to in~~ meet the restoration timelines of Rule 502.01.

~~(3-29-10)~~( )

**03. Compliance Standard.** Each month at least ~~ninety~~ eighty percent (~~90~~80%) of out-of-service trouble reports shall be cleared in accordance with Rules 502.01 and 502.02. ~~The telephone company shall keep a monthly service record as described in Rule 501.01 and shall notify the Commission if the record indicates the ninety percent (90%) level has not been met for a period of three (3) consecutive months.~~

~~(3-29-10)~~( )

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**DOCKET NO. 38-0406-1202 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5709, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, **Vol. 12-10, pages 892 through 901**.

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Teresa Luna, Director, at (208)332-1826.

DATED this 2nd day of November, 2012.

Teresa Luna  
Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is **October 3, 2012**.

**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 67-5709, 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 17, 2012.

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:

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

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

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content



of the rules is improbable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1826.

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 24, 2012.

DATED this 10th day of September, 2012.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0406-1202**

**IDAPA 38**  
**TITLE 04**  
**CHAPTER 06**

**38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the state properties in the Capitol Mall and other state facilities.

( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities."

( )

**02. Scope.** These rules contain the provisions for use of the exterior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. Rules governing the interior of the Capitol Office Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.07, "Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State

Facilities.” Rules governing the use of the exterior of the Capitol are codified under IDAPA 38.04.08, “Rules Governing Use of Idaho State Capitol Exterior.” Rules governing parking are codified under IDAPA 38.04.04, “Capitol Mall Parking Rules.” ( )

**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 compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

These rules do not provide for appeals of the requirements for use of the State Facilities. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. ( )

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

**01. Office Hours.** The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. ( )

**02. Mailing Address.** The Department’s mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. ( )

**03. Street Address.** The Department’s principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. ( )

**04. Website Address.** The Department’s website address is <http://adm.idaho.gov/>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**007. SEVERABILITY.**

Pursuant to IDAPA 44.01.01, “Rules of the Administrative Rules Coordinator,” all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. ( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. ( )

**02. Capitol Annex.** The grounds, exterior of buildings, exterior of improvements, and real property located at 514 West Jefferson Street, Boise, Idaho and occupying block 65 as shown

on the Boise City original townsite plat filed in the Ada County Recorder's office in Book 1 on page 1. ( )

**03. Capitol Mall Office Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. ( )

**04. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. ( )

**05. Department.** The Department of Administration. ( )

**06. Director.** The Director of the Department of Administration or his designee. ( )

**07. Event.** Any press conference, performance, ceremony, presentation, meeting, rally, reception, demonstration, protest, educational tour or gathering of people held at the State Facilities. As used in this definition, a gathering consists of two (2) or more people. ( )

**08. Exhibit.** Any temporary Commemorative Installation and any attended or unattended display, including, but not limited to, equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. ( )

**09. Multi-Agency Facilities.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 102 of these rules. ( )

**10. Other State Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 101 of these rules. ( )

**11. Parking Facilities.** The facilities, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(b), Idaho Code. ( )

**12. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. ( )

**13. Public Use.** Use that is not an Event, Private Event, Exhibit, Private Exhibit or use by a public officer, official, employee, contractor, agency, board or commission for state of Idaho business. Public Use includes, but is not limited to, the following: ( )

**a.** The transit of individuals through the State Facilities unrelated to an Event or Exhibit; ( )

**b.** Incidental, short-term recreational use of the State Facilities unrelated to an Event or Exhibit; and ( )

c. The conduct of public business with any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. ( )

**14. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. ( )

**15. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. ( )

**16. State Facilities.** The Capitol Mall Office Properties, the Capitol Annex, the Multi-agency Facilities, the Parking Facilities and the Other State Properties. Use of the phrase “at the State Facilities” shall include the exterior of buildings, exterior of improvements and the grounds and real property comprising the State Facilities. ( )

**17. State Maintenance and Improvements.** Maintenance or improvement of the State Facilities by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. ( )

**011. -- 100. (RESERVED)**

**101. OTHER STATE PROPERTIES.**

These rules shall apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: ( )

**01. Idaho State Historical Society Properties.** ( )

a. The following properties owned or operated by the Idaho State Historical Society shall be Other Properties under these rules: ( )

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. ( )

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. ( )

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. ( )

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. ( )

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. ( )

vi. Pierce Courthouse, located in Pierce, Idaho. ( )

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. ( )

**b.** The following sections of these rules shall apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: ( )

i. Subsection 010.04. “Director” shall mean the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. ( )

ii. Subsection 200.01. “Authorized Uses by the Public” shall apply except that the Director may authorize Private Events or Exhibits and the exclusion of members of the public from attending Private Events and Exhibits. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from a Private Event or Exhibit. ( )

iii. Section 302. “Hours and Locations of Use” shall apply as if the Idaho State Historical Properties were Capitol Mall Office Properties unless other hours of use or access restrictions are designated at the property, or posted on the Idaho State Historical Society website. ( )

iv. Subsection 305.02. “Domestic Animals” shall apply unless a sign at the property specifies that domestic animals are not permitted. ( )

**c.** The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: hours of use; commercial use; Public Use; Private Events or Exhibits; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound amplification; fireworks displays; and, use of utilities. ( )

**102. MULTI-AGENCY FACILITIES.**

These rules shall apply to the following Multi-agency Facilities managed and administered by the Department. ( )

**01. Lewiston State Office Building.** Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. ( )

**02. Idaho Falls State Office Building.** Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. ( )

**103. -- 199. (RESERVED)**

**200. USE OF STATE FACILITIES.**

**01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the State Facilities are available for use by the public for the following: ( )

**a.** Events. Events shall be held only in the locations and during the hours set forth in these rules. Events shall not exclude any member of the public from attending the Event. ( )

**b.** Exhibits. Exhibits shall be held only in the locations and during the hours set forth in these rules. Exhibits shall not exclude any member of the public from attending the Exhibit. ( )

**c.** Public Use. ( )

**02. Prohibited Uses.** The following uses are prohibited at the State Facilities: ( )

**a.** Commercial Activity. The State Facilities shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the State Facilities. The following are not commercial activity prohibited by this subsection: ( )

**i.** Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. ( )

**ii.** Concessions authorized by law. ( )

**iii.** Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official. ( )

**b.** Camping. ( )

**c.** Private Events and Exhibits. ( )

**03. State Events and Exhibits.** State Events and Exhibits may occur in any portion of the State Facilities. The Director may waive all or a portion of these rules for a State Event or Exhibit. ( )

**04. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the State Facilities. State Events and Exhibits shall have priority over public Events and Exhibits, and Public Use. ( )

**201. EVENT AND EXHIBIT DURATION.**

The duration of an Event or Exhibit shall not exceed seven (7) consecutive days, including time for set-up and clean-up. An Event or Exhibit may continue to use the State Facilities after a seven (7) consecutive day period if the Event or Exhibit does not use the State Facilities for twenty-four

(24) hours or more between each seven (7) consecutive day period. Events and Exhibits shall not continue beyond the hours for Event or Exhibit use of the State Facilities set forth in Section 302 of these rules. Exhibits must be removed at the earlier of the conclusion of the Event or the daily conclusion of the hours for Event and Exhibit use of the State Facilities. ( )

**202. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use of the State Facilities. ( )

**203. ESTABLISHMENT OF PERIMETERS.**

Security Personnel and law enforcement may establish perimeters separating participants in Exhibits and Events. Participants in and observers of any Event or Exhibit shall observe perimeters set pursuant to this section. ( )

**204. AREA CLOSURES.**

The Director may direct that any portion of the State Facilities be closed for Events, Exhibits and Public Use upon a finding that the closed portion of the State Facilities has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Facilities closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Facilities. Circumstances presenting an imminent danger of damage to the State Facilities include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. ( )

**205. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the State Facilities set forth in Sections 301 through 399 of these rules shall apply to all Events, Exhibits, and Public Use of the State Facilities. ( )

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference with Primary Use of Facility or Real Property.** Events, Exhibits, and Public Use of the State Facilities shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the State Facilities include, but are not limited to, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. ( )

**02. Interference with Access.** Events, Exhibits and Public Use of the State Facilities shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Facilities. ( )

**302. HOURS AND LOCATIONS OF USE.**

The hours for Events and Exhibits at the State Facilities are as follows: ( )

**01. Capitol Mall Office Properties and the Multi-Agency Facilities.** The hours of use of the Capitol Mall Office Properties and the Multi-Agency Facilities are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. ( )

**02. Capitol Annex.** The hours of use of the Capitol Mall Annex are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. ( )

**03. Parking Facilities.** The hours of use of the Parking Facilities shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." ( )

**04. Maintenance and Improvements.** Notwithstanding the hours set forth in Subsections 302.01 and 302.02 of this section, Events, Exhibits and Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. ( )

**303. MOTORIZED VEHICLES.**

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. ( )

**304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, and scooters may not be used at the State Facilities. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a State Facility, users must store non-motorized transportation in a designated storage area on the exterior of a State Facility. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. ( )

**305. ANIMALS.**

The following shall apply to animals at the State Facilities: ( )

**01. Wildlife.** Unless authorized by the Director no person shall: ( )

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the State Facilities. ( )

**b.** No person shall feed, give, or offer food or any noxious substance to a wild animal at the State Facilities. ( )



**02. Domestic Animals.** ( )

**a.** Domestic animals are not allowed at the State Facilities unless leashed and under the control of the person bringing the animal to the State Facility. ( )

**b.** The person bringing the animal to the State Facilities shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. ( )

**306. LANDSCAPING.**

Unless authorized by the Director, no person shall: ( )

**01. Plants.** Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the State Facilities. ( )

**02. Grass.** Dig in or otherwise damage grass areas at the State Facilities. ( )

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment at the State Facilities. ( )

**04. Landscaping Materials.** Move or alter landscaping materials at the State Facilities including, but not limited to, rock, edging materials, and bark or mulch. ( )

**05. Climbing.** Climb or scale buildings, memorials, statues, trees, fences, or improvements at the State Facilities. ( )

**307. FOOD AND BEVERAGES.**

Consumption of food and beverages at the State Facilities is subject to the following: ( )

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Facilities. ( )

**02. Alcohol.** Alcohol may not be consumed or distributed at the State Facilities. ( )

**308. SMOKING.**

All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the State Facilities. ( )

**309. FIRES, CANDLES, AND FLAMES.**

No fires, candles, or other sources of open flame are permitted at the State Facilities. ( )

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. ( )

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. ( )

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. ( )

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. ( )

**05. Attaching, Affixing, Leaning, or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Facilities not designed for that purpose or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Facilities or embedded into the ground, including, but not limited to, placement of a stake, post or rod into the ground to support materials. ( )

**06. Materials Causing Damage to Exterior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the State Facilities or any systems or utilities of the State Facilities including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. ( )

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Facilities that such material is not discarded outside of designated trash receptacles. ( )

**08. Surface Markings.** Users shall not use any material to mark on any surface of the State Facilities including chalk, paint, pens, ink, or dye. ( )

### **311. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel or law enforcement may inspect:( )

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. ( )

**02. Items.** Items brought to the State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the State Facilities. ( )

### **312. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any

person at the State Facilities immediately remove from the State Facilities any club, bat, or other item that can be used to injure, damage, or harm persons or property. ( )

**313. SOUND LEVEL AND AMPLIFICATION.**

Sound amplification may not be used at the State Facilities. Sound levels, whether amplified or not, must not cause a disruption to the primary use of the State Facilities. Security Personnel, law enforcement or a state employee or agent supervising a State Facility may discontinue an Event or Exhibit or Public Use if they request that the sound level be reduced and those in attendance do not reduce the sound level. ( )

**314. UTILITY SERVICE.**

Events, Exhibits, and the public may not use the utility services of the State Facilities other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of an Event or Exhibit authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Facilities or the equipment or apparatus using utility service fails to comply with applicable rules or codes. ( )

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons off of the State Facilities and delay or postpone any Event, Exhibit or other activity until the emergency or threat is abated. ( )

**316. COMPLIANCE WITH LAW.**

All use of the State Facilities shall comply with applicable law including, but not limited to, fire and safety codes. ( )

**317. HEALTH, SAFETY, AND MAINTENANCE OF STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. ( )

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the Event or Exhibit. ( )

**03. Public Health.** No person shall excrete human waste at the State Facilities except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. ( )

**04. Fireworks.** No person shall possess or use fireworks at the State Facilities. ( )

**318. -- 399. (RESERVED)**

**400. LIABILITY AND INDEMNIFICATION.**

**01. User Retains Liability.** Individuals, entities, and organizations using the State Facilities are responsible and liable for all suits, damages, claims or liabilities arising from use of the State Facilities. The state of Idaho shall have no liability for injury to private property, including posters, placards, banners, signs, equipment, tables, materials, and displays at the State Facilities. ( )

**02. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. ( )

**03. Indemnification.** Any individual, entity, or organization permitted to use the State Facilities is deemed to agree to indemnify the state of Idaho from and against all claims, demands, actions, or causes of action, together with any and all losses, costs, or related expenses asserted by any group or persons for bodily injury or damage to property arising out of or in any way connected with the use of the State Facilities. ( )

**04. No Endorsement.** Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in an Event or Exhibit. ( )

**401. -- 999. (RESERVED)**

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.07 - RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**DOCKET NO. 38-0407-1202 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5709, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 903 through 909](#).

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Teresa Luna, Director, at (208)332-1826.

DATED this 2nd day of November, 2012.

Teresa Luna  
Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is **October 3, 2012**.

**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 67-5709, 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 17, 2012.

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:

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

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

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content

of the rules is improbable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1826.

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 24, 2012.

DATED this 11th day of September, 2012.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0407-1202**

**IDAPA 38  
TITLE 04  
CHAPTER 07**

**38.04.07 - RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the State Properties in the Capitol Mall and other state facilities.

( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.07, "Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities."

( )

**02. Scope.** These rules contain the provisions for use of the interior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. The interiors of such facilities occupied by a tenant under lease may be subject to additional requirements imposed by the tenant. Rules governing the exterior of the Capitol Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified

under IDAPA 38.04.06, “Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities.” Rules governing the use of the exterior of the Idaho State Capitol are codified under IDAPA 38.04.08, “Rules Governing Use of Idaho State Capitol Exterior.” Rules governing parking are codified under IDAPA 38.04.04, “Capitol Mall Parking Rules.”

( )

**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 compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department’s office.

( )

**003. ADMINISTRATIVE APPEALS.**

These rules do not provide for appeals of the requirements for use of the Interior State Facilities.

( )

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules.

( )

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

**01. Office Hours.** The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays.

( )

**02. Mailing Address.** The Department’s mailing address is P.O. Box 83720, Boise, Idaho 83720-0013.

( )

**03. Street Address.** The Department’s principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972.

( )

**04. Website Address.** The Department’s website address is <http://adm.idaho.gov/>.

( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code.

( )

**007. SEVERABILITY.**

Pursuant to IDAPA 44.01.01, “Rules of the Office of the Administrative Rules Coordinator,” all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion.

( )

**008. -- 009. (RESERVED)****010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code.

( )



**02. Capitol Annex.** The interior of improvements located at 514 West Jefferson Street, Boise, Idaho. ( )

**03. Capitol Mall Office Properties.** The interior of improvements set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. ( )

**04. Common Space.** The portion of the Interior State Facility that is not Tenant Space. Common Space includes but is not limited to interior lobbies not within Tennant Space and restrooms not accessed through Tennant Space. Common Space does not include Tenant Space or any area marked “private,” “no admission,” “staff only” or similarly designated as not open to the public. ( )

**05. Department.** The Department of Administration. ( )

**06. Director.** The Director of the Department of Administration or his designee. ( )

**07. Interior State Facilities.** The interior spaces within the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Multi-agency Facilities, and the Other State Properties. ( )

**08. Multi-Agency Facilities.** The interior of buildings and improvements set forth in Section 102 of these rules. ( )

**09. Other State Properties.** The interior of buildings and improvements set forth in Section 101 of these rules. ( )

**10. Parking Facilities.** The interior of improvements set forth in Section 67-5709(2)(b), Idaho Code. ( )

**11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. ( )

**12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. ( )

**13. Tenant Space.** The portion of the Interior State Facilities occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. ( )

**011. -- 100. (RESERVED)**

**101. OTHER STATE PROPERTIES.**

These rules shall apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: ( )

**01. Idaho State Historical Society Properties. ( )**

**a.** The interior of the following properties owned or operated by the Idaho State Historical Society shall be Other Properties under these rules: ( )

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. ( )

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. ( )

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. ( )

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. ( )

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. ( )

vi. Pierce Courthouse, located in Pierce, Idaho. ( )

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. ( )

**b.** The following sections of these rules shall apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: ( )

i. Subsection 010.04. "Director" shall mean the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. ( )

ii. Subsection 200.01. "Authorized Uses by the Public" shall apply except that the Director may authorize public or private uses of the interior of the Idaho Historical Society Properties and the exclusion of members of the public from attending such events. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from the interior of the Idaho Historical Society Properties. ( )

iii. Section 302. "Hours and Locations of Use" shall apply as if the Idaho State Historical Properties were Capitol Mall Office Properties unless other hours of use or access restrictions are designated at the property, or posted on the Idaho State Historical Society website. ( )

**c.** The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: hours of use; authorized uses; consumption and distribution of alcohol; affixing of

materials to the Idaho State Historical Society Properties; use of sound amplification; and, use of utilities. ( )

**102. MULTI-AGENCY FACILITIES.**

These rules shall apply to the following Multi-agency Facilities managed and administered by the Department: ( )

**01. Lewiston State Office Building.** Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. ( )

**02. Idaho Falls State Office Building.** Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. ( )

**103. -- 199. (RESERVED)****200. USE OF INTERIOR STATE FACILITIES.**

**01. Authorized Uses by the Public.** Public access to the Interior State Facilities is limited to the conduct of business with a tenant. Public access to the Tenant Space is limited to the conduct of business with the tenant. ( )

**02. Prohibited Uses.** The following uses are prohibited at the Interior State Facilities: ( )

**a. Events.** The Interior State Facilities shall not be used by the public for press conferences, performances, ceremonies, presentations, meetings, rallies, receptions or gatherings. ( )

**b. Exhibits.** The Interior State Facilities shall not be used by the public for attended or unattended displays, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. ( )

**c. Commercial Activity.** The Common Space shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service in the Common Space. ( )

**201. -- 299. (RESERVED)****300. RESTRICTIONS AND LIMITATIONS ON USE.**

Except as otherwise provided, the restrictions and limitations on use of the Interior State Facilities set forth in Sections 301 through 399 of these rules shall apply to all use of the Interior State Facilities. ( )

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference With Primary Use of Facility or Real Property.** No person shall interfere with the primary use of the Interior State Facilities. The primary uses of the Interior State

Facilities include but are not limited to public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use Interior State Facilities and the conduct of business by a tenant of a state facility. ( )

**02. Interference With Access.** No person shall block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the Interior State Facilities. ( )

### **302. HOURS AND LOCATIONS OF USE.**

**01. Capitol Mall Office Properties and Multi-Agency Facilities.** The hours for public access to the interior of the Capitol Mall Office Properties and the Multi-agency Facilities are 8 a.m. to 5 p.m. on State Business Days. ( )

**02. Capitol Annex.** The Capitol Annex is closed to public access. ( )

**03. Parking Facilities.** The hours of use of the Parking Facilities shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." ( )

### **303. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, scooters, and other non-motorized transportation may not be used in the Interior State Facilities. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a state facility, users must store non-motorized transportation in a designated storage area on the exterior of a state facility. Child strollers and wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. ( )

### **304. ANIMALS.**

Animals are not allowed at the Interior State Facilities unless the animal is a service animal necessary to assist persons with disabilities or an animal in the service of law enforcement. Service animals must be leashed and under the control of the person bringing the animal to the Interior State Facilities. The person bringing the animal to the Interior State Facilities shall have in his possession the equipment necessary to remove the animal's urine and fecal matter and shall immediately remove all urine and fecal matter deposited by the animal. ( )

### **305. FOOD AND BEVERAGES.**

Consumption of food and beverages at the Interior State Facilities is subject to the following: ( )

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the Interior State Facilities. ( )

**02. Alcohol.** Alcohol may not be consumed or distributed in the Common Space. ( )

### **306. SMOKING.**

Smoking is not allowed in the Interior State Facilities. ( )

**307. FIRES, CANDLES, AND FLAMES.**

No fires, candles or other sources of open flame are permitted in the Interior State Facilities. ( )

**308. LIMITS ON USE OF COMMON SPACE.**

The following provisions apply to the Common Space. ( )

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. ( )

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. ( )

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. ( )

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Interior State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. ( )

**05. Attaching, Affixing, Leaning or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any interior surface of the Common Space not designed for that purpose. No items may be leaned or propped against any interior surface of the Common Space. ( )

**06. Materials Causing Damage to Interior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface in the Common Space or any systems or utilities of the Interior State Facilities, including but not limited to fire suppression systems, drains, ventilation systems, and lighting systems. ( )

**309. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel and law enforcement may inspect: ( )

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. ( )

**02. Items.** Items brought to the Interior State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the Interior State Facilities. ( )

**310. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities; bombs, destructive devices, shrapnel, weapons of mass destruction, biological

weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat or other item that can be used to injure, damage, or harm persons or property at the Interior State Facilities.

( )

**311. UTILITY SERVICE.**

The public may not use the utility services of the Interior State Facilities except restrooms. ( )

**312. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons out of the Interior State Facilities and delay or postpone any activity until the emergency or threat is abated. ( )

**313. COMPLIANCE WITH LAW.**

All use of the Interior State Facilities shall comply with applicable law, including but not limited to fire and safety codes. ( )

**314. MAINTENANCE OF INTERIOR STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the Interior State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. ( )

**02. Items Return to Proper Location.** Users shall return all items, including but not limited to movable furniture and trash receptacles to their location at the conclusion of use. ( )

**315. -- 999. (RESERVED)**

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR**

#### **DOCKET NO. 38-0408-1202 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-1604 and 67-5709, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 911 through 922](#).

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Teresa Luna, Director, at (208)332-1826.

DATED this 2nd day of November, 2012.

Teresa Luna  
Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is **October 3, 2012**.

**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 67-1604 and 67-5709, 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 17, 2012.

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:

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

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

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules incorporate public comment submitted on the



original temporary rules and because further consensus between interested parties on the content of the rules is improbable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1826.

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 24, 2012.

DATED this 10th day of September, 2012.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0408-1202**

**IDAPA 38**  
**TITLE 04**  
**CHAPTER 08**

**38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR**

**000. LEGAL AUTHORITY.**

Section 67-1604, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing access to and use by the public of the capitol building and its grounds. Section 67-5709, Idaho Code, gives the Director authority to promulgate rules governing certain public facilities. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." ( )

**02. Scope.** These rules contain the provisions for use of the exterior of the Idaho State Capitol. Rules governing the exterior of the other state facilities are codified under IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." Rules governing the interior of the Capitol Mall properties, other state

properties, and the multi-agency facilities are codified under IDAPA 38.04.07, “Rules Governing Use of Interior State Property in the Capitol Mall and Other State Facilities.” Rules governing parking are codified under IDAPA 38.04.04, “Capitol Mall Parking Rules.” ( )

**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 compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

These rules provide for appeals of the denial of a Permit under Section 403 of these rules. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. ( )

**005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS.**

**01. Office Hours.** The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. ( )

**02. Mailing Address.** The Department’s mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. ( )

**03. Street Address.** The Department’s principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. ( )

**04. Website Address.** The Department’s website address is <http://adm.idaho.gov/>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**007. SEVERABILITY.**

Pursuant to IDAPA 44.01.01, “Rules of the Administrative Rules Coordinator,” all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. ( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. ( )

**02. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. ( )

- 03. Department.** The Department of Administration. ( )
- 04. Director.** The Director of the Department of Administration or his designee. ( )
- 05. Event.** Any press conference, performance, ceremony, presentation, meeting, rally, reception, demonstration, protest, educational tour or gathering of people held on the State Capitol Exterior. As used in this definition, a rally is a gathering of two (2) or more people. ( )
- 06. Exhibit.** Any temporary Commemorative Installation and any attended or unattended display including, but not limited to, equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. ( )
- 07. Jefferson Steps.** The building entrance at the second floor of the State Capitol, the steps extending from the entrance, and the hard surface extending between the steps and the public sidewalk along Jefferson Street. ( )
- 08. Permit.** A written authorization issued by the Director allowing use of the State Capitol Exterior as set forth in the Permit. A Permit serves as a reservation to use a portion of the State Capitol Exterior with the priority for use set forth in Subsection 200.04 of these rules. ( )
- 09. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. ( )
- 10. Public Use.** Use that is not an Event, Private Event, Exhibit, Private Exhibit or use by a public officer, official, employee, contractor, agency, board or commission for state of Idaho business. Public Use includes, but is not limited to, the following: ( )
- a.** The transit of individuals through the State Capitol Exterior unrelated to an Event or Exhibit; ( )
  - b.** Incidental, short-term recreational use of the State Capitol Exterior unrelated to an Event or Exhibit; and ( )
  - c.** The conduct of public business with any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. ( )
- 11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. ( )
- 12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. ( )

**13. State Capitol Exterior.** The exterior of the Idaho State Capitol, the real property, the grounds, and the improvements on the exterior of the Idaho State Capitol or its grounds, all of which is located at capitol square as identified on the Boise City original townsite plat filed in the Ada County Recorder's office in book 1 on page 1. The State Capitol Exterior is bounded by the following streets: State Street, Sixth Street, Jefferson Street, and Eighth Street. ( )

**14. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. ( )

**15. State Maintenance and Improvements.** Maintenance or improvement of the State Capitol Exterior by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. ( )

**011. -- 199. (RESERVED)**

**200. USE OF STATE CAPITOL EXTERIOR.**

**01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the State Capitol Exterior is available for use by the public for the following: ( )

**a. Events.** Events shall be held only in the locations and during the hours set forth in these rules. Events shall not exclude any member of the public from attending the Event. ( )

**b. Exhibits.** Exhibits shall be held only in the locations and during the hours set forth in these rules. Exhibits shall not exclude any member of the public from attending the Exhibit. ( )

**c. Public Use.** ( )

**02. Prohibited Uses.** The following uses are prohibited in the State Capitol Exterior: ( )

**a. Commercial Activity.** The State Capitol Exterior shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service on the State Capitol Exterior. ( )

**b. Camping.** ( )

**c. Private Events and Private Exhibits.** ( )

**03. State Events and Exhibits.** State Events and Exhibits may occur in any portion of the State Capitol Exterior. The Director may waive all or a portion of these rules for a State Event or Exhibit. ( )

**04. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the State Capitol Exterior. State Events and Exhibits shall have priority over public Events and Exhibits, and Public Use. Events and Exhibits held under a Permit shall have priority over other public Events and Exhibits and Public Use. ( )

**201. EVENT AND EXHIBIT DURATION.**

The duration of an Event or Exhibit on the State Capitol Exterior, including time for set-up and clean-up, shall not exceed seven (7) consecutive days. An Event or Exhibit may continue to use the State Capitol Exterior after a seven (7) consecutive day period if the Event or Exhibit does not use the State Capitol Exterior for twenty-four (24) hours or more between each seven (7) consecutive day period. Events and Exhibits shall not continue beyond the hours for Event or Exhibit use of the State Capitol Exterior set forth in Section 302 of these rules. Exhibits must be removed at the earlier of the conclusion of the Event or the daily conclusion of the hours for Event and Exhibit use of the State Capitol Exterior. ( )

**202. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use on the State Capitol Exterior. Where requested in a Permit application for use of the Jefferson Street Steps, the Department may provide a podium and a public address system. ( )

**203. ESTABLISHMENT OF PERIMETERS.**

Security personnel and law enforcement may establish perimeters separating participants in Exhibits and Events. Participants in and observers of any Event or Exhibit shall observe perimeters set pursuant to this section. ( )

**204. AREA CLOSURES.**

The Director may direct that any portion of the State Capitol Exterior be closed for Events, Exhibits and Public Use upon a finding that the closed portion of the State Capitol Exterior has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Capitol Exterior closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Capitol Exterior. Circumstances presenting an imminent danger of damage to the State Capitol Exterior include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. ( )

**205. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the State Capitol Exterior set forth in Sections 301 through 399 of these rules shall apply to all Events, Exhibits, and Public Use of the State Capitol Exterior. ( )

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference With Primary Use of State Capitol Exterior.** Events, Exhibits, and Public Use of the State Capitol Exterior shall not interfere with the primary use of the Idaho State Capitol or the adjacent real property and improvements. The primary use of the Idaho State Capitol includes, but is not limited to, the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the Idaho State Capitol or the State Capitol Exterior. ( )

**02. Interference With Access.** Events, Exhibits, and Public Use of the State Capitol Exterior shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Capitol Exterior. ( )

**302. HOURS AND LOCATIONS OF USE.**

**01. Hours.** The hours for Events and Exhibits on the State Capitol Exterior are as follows: ( )

**a. General Hours.** The general hours for Events and Exhibits are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. ( )

**b. Legislative Sessions.** When either house of the legislature or a legislative committee is in session prior to or following general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the session and closed thirty (30) minutes after adjournment of the legislative body conducting business. ( )

**c. Public Events in the State Capitol.** When any Event is publicly scheduled in the interior of the Idaho State Capitol outside the general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the Event and closed thirty (30) minutes after the published time for the conclusion of the Event. ( )

**d. Jefferson Street Steps.** The hours for Events and Exhibits at the Jefferson Street Steps are 6 a.m. to 11:59 p.m. Events and Exhibits shall not occur on the Jefferson Street Steps between the hours of 12 a.m. and 5:59 a.m. ( )

**e. Notwithstanding the hours set forth in Paragraphs 302.01.a., 302.01.b., 302.01.c., and 302.01.d. of this section, Events and Exhibits shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. ( )**

**02. Locations.** In addition to limitations on the interference with access set forth in Section 301 of these rules and compliance with all fire and safety codes, all Events, Exhibits and Public Use on the State Capitol Exterior shall be on the Jefferson Street Steps or on hard surfaces, including concrete and granite, on the State Capitol Exterior, and shall be at least fifteen (15) feet from the exterior walls and windows of the Idaho State Capitol. Events or Exhibits may use the Jefferson Street Stairs for podiums, equipment, standing, and seating, subject to compliance with fire and safety codes. No persons shall place items on, sit or stand on stairways other than the Jefferson Street Steps. ( )

**303. MOTORIZED VEHICLES.**

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. ( )

**304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, and scooters may not be used on the State Capitol Exterior. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior, users must store non-motorized transportation in a designated storage area on the State Capitol Exterior. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. ( )

**305. ANIMALS.**

The following shall apply to animals on the State Capitol Exterior: ( )

**01. Wildlife.** Unless authorized by the Director no person shall: ( )

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot or throw any object at a wild animal on the State Capitol Exterior. ( )

**b.** No person shall feed, give or offer food or any noxious substance to a wild animal on the State Capitol Exterior. ( )

**02. Domestic Animals.** ( )

**a.** Domestic animals are not allowed on the State Capitol Exterior unless leashed and under the control of the person bringing the animal to the State Capitol Exterior. ( )

**b.** The person bringing the animal to the State Capitol Exterior shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. ( )

**306. LANDSCAPING.**

No person other than state employees or contractors designated by the Director shall: ( )

**01. Plants.** Damage, cut, carve, transplant or remove any plant including, but not limited to, trees, on the State Capitol Exterior. ( )

**02. Grass.** Dig in or otherwise damage grass areas on the State Capitol Exterior. ( )

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment on the State Capitol Exterior. ( )

**04. Landscaping Materials.** Move or alter landscaping materials on the State Capitol Exterior including, but not limited to, rock, edging materials, and bark or mulch. ( )

**05. Climbing.** Climb or scale buildings, Commemorative Installations, trees, fences, posts or other improvements on the State Capitol Exterior. ( )

**307. FOOD AND BEVERAGES.**

Consumption of food and beverages on the State Capitol Exterior is subject to the following: ( )

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Capitol Exterior. ( )

**02. Alcohol.** Alcohol may not be consumed or distributed on the State Capitol Exterior. ( )

**308. SMOKING.**

All persons shall observe the smoke free entrance notices and shall smoke only in designated areas of the State Capitol Exterior. ( )

**309. FIRES, CANDLES, AND FLAMES.**

No fires, candles or other sources of open flame are permitted on the State Capitol Exterior. ( )

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. ( )

**02. Railings.** No items may be placed on railings and no persons shall sit or stand on railings. ( )

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of the Idaho State Capitol or improvements on the grounds of the State Capitol Exterior to another level or to the ground. ( )



**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Capitol Exterior, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. ( )

**05. Attaching, Affixing, Leaning or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Capitol Exterior or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Capitol Exterior or embedded into the ground including, but not limited to, placement of a stake, post or rod into the ground to support materials. ( )

**06. Materials Causing Damage to Surfaces.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface on the State Capitol Exterior or any systems or utilities of the State Capitol Exterior including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. ( )

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Capitol Exterior that such material is not discarded outside of designated trash receptacles. ( )

**08. Surface Markings.** Users shall not use any material to mark on any surface of the State Capitol Exterior including chalk, paint, pens, ink, or dye. ( )

**311. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel and law enforcement may inspect: ( )

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. ( )

**02. Items.** Items brought onto the State Capitol Exterior, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property on the State Capitol Exterior. ( )

**312. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Capitol Exterior: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Capitol Exterior immediately remove from the State Capitol Exterior any club, bat, or other item that can be used to injure, damage, or harm persons or property. ( )

**313. SOUND LEVEL AND AMPLIFICATION.**

Sound amplification may not be used on the State Capitol Exterior unless authorized by a Permit. Sound levels, whether amplified or not, must not cause a disruption to the primary use of the State

Capitol Exterior. Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior may discontinue an Event, Exhibit or Public Use if they request that the sound level be reduced and those in attendance do not reduce the sound level. ( )

**314. UTILITY SERVICE.**

Events, Exhibits, and the public may not use the utility services of the State Capitol Exterior other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of an Event or Exhibit authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Capitol Exterior or the equipment or apparatus using utility service fails to comply with applicable rules or codes. ( )

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, security personnel and state employees or officials may direct all persons off of the State Capitol Exterior and delay or postpone any Event, Exhibit, Public Use or other activity until the emergency or threat is abated. ( )

**316. COMPLIANCE WITH LAW.**

All use of the State Capitol Exterior shall comply with applicable law including, but not limited to, fire and safety codes. ( )

**317. HEALTH, SAFETY AND MAINTENANCE OF STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the State Capitol Exterior in reasonably clean condition after use, including depositing all trash in designated receptacles. ( )

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the Event or Exhibit. ( )

**03. Public Health.** No person shall excrete human waste at the State Capitol Exterior except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. ( )

**04. Fireworks.** No person shall possess or use fireworks on the State Capitol Exterior. ( )

**318. -- 399. (RESERVED)**

**400. PERMITS.**

**01. Use Without a Permit.** A Permit grants a reservation providing priority for use of the area specified in the Permit as set forth in Subsection 200.04 of these rules. Applicants

desiring to obtain a Permit for use of the State Capitol Exterior outside of the Permit areas, hours or duration or who have not submitted an application within the application period may use the State Capitol Exterior, subject to the provisions of these rules, on a first-come, first used basis. ( )

**02. Permit Areas, Hours and Duration.** ( )

**a.** The Director will consider and grant Permits only for Event or Exhibit use of the Jefferson Street Steps. ( )

**b.** The Director will issue Permits reserving use of the Jefferson Street Steps only between the hours of 7 a.m. and 6 p.m. on State Business Days. ( )

**c.** The duration of a Permit will not exceed four (4) consecutive hours. ( )

**03. Application Period.** Permit applications must be received and complete at least five (5) State Business Days prior to the requested date and time period of the Permit. The Department will not accept applications submitted more than six (6) months prior to the requested date of the Permit. ( )

**04. Validity.** Permits are valid only for the dates, times, and locations specified on the Permit as approved by the Director. ( )

**05. Distribution.** Permits shall be granted by the Director on a first-come, first-served basis, subject to Subsection 200.03 of these rules. Only one (1) Permit will be granted for the Jefferson Street Steps during any period of time. ( )

**06. Application Requirements.** Applications for a Permit shall be in writing on a form prescribed by the Director and available at the office of the Division of Public Works and the Department's website. The Director will only process applications that are complete and signed by the individual making a request or an authorized representative of the entity or organization making the request. The Director may make reasonable inquiry to confirm the accuracy of the application and the authority of the party signing the application. ( )

**07. Fees and Costs.** There is no fee for a Permit. Individuals, entities, and organizations may be charged for direct costs as set forth in the Permit including, but not limited to, the following: trash collection, janitorial services, and security services. ( )

**08. Conditions.** The Director may impose reasonable conditions on the use of the State Capitol Exterior in the Permit for the purpose of protecting persons and property. Conditions may include the acquisition of liability insurance and a bond as security for costs arising from the use. ( )

**09. Transferability.** Permits are non-transferable. ( )

**401. APPROVALS AND DENIALS OF A PERMIT APPLICATION.**

**01. Period for Approval or Denial.** The Department will approve or deny a complete

application within two (2) State Business Days of the submission of the application. The failure of the Department to issue a Permit within (2) State Business Days of the submission of a complete application shall be deemed a denial of the application. ( )

**02. Basis for Denial.** Permits may be denied for one (1) or more of the following: ( )

**a.** A Permit has been granted for all or part of the requested location during all or part of the requested time period. ( )

**b.** A public entity or official will be using all or part of the requested location during all or part of the requested time period. ( )

**c.** The requested use would violate any provision of these rules or applicable law. ( )

**d.** These rules do not authorize the use for the location or times requested or do not authorize the issuance of a Permit for the location requested. ( )

**e.** The Permit application is incomplete, contains a material falsehood, or contains a material misrepresentation. ( )

**f.** The Permit applicant has not certified that the applicant will comply with these rules or applicable law. ( )

**g.** The party signing the application is not legally competent to bind themselves or the organization or entity submitting the application. ( )

**h.** The individual, organization or entity submitting the application: ( )

i. Failed to pay costs or damages arising from an earlier use of any state facility; ( )

ii. Made a material misrepresentation regarding the nature or scope of the use on a prior Permit application; ( )

iii. Violated the terms of prior Permits issued to the individual, organization or entity; ( )

or

iv. Violated any applicable law in the course of a previous Event or Exhibit. ( )

**i.** The requested use would cause a clear and present danger to the orderly processes of state of Idaho government or to the use of the State Capitol Exterior due to advocacy of: ( )

i. The violent overthrow of the government of the United States, the state of Idaho, or any political subdivision thereof; ( )

ii. The willful damage or destruction, or seizure and subversion of public property;

iii. The forcible disruption or impairment of or interference with the regularly schedule functions of the state of Idaho; ( )

iv. The physical harm, coercion, intimidation or other invasions of the lawful rights of public officials or the public; or ( )

v. Other disorders of a violent nature. ( )

**402. REVOCATION OF A PERMIT.**

A Permit may be revoked by the Director for the violation of any term or condition of the Permit or the violation of law including, but not limited to, the violation of any provision of these rules. ( )

**403. APPEALS.**

**01. Time for Appeal.** The individual or the organization or entity submitting an application may request that the Department initiate a contested case within the period set forth below. The Department will not initiate a contested case after the following periods. ( )

a. Seven (7) State Business Days following the written denial of an application for a Permit. ( )

b. Seven (7) State Business Days following the revocation of a Permit. ( )

c. Seven (7) State Business Days following the date the Department was required to approve or deny the application for a Permit pursuant to Subsection 402.01 of these rules. ( )

**02. Requesting an Appeal.** The individual or the organization or entity submitting an application shall request an appeal in writing, with a physical copy delivered to the Director at the address set forth in Section 005 of these rules. Electronic delivery shall not be deemed a physical copy. The written request shall contain the following: ( )

a. The name, address, and contact information of the appellant; ( )

b. A concise statement of the reason the appeal should be granted; ( )

c. Whether the appellant requests informal disposition to expedite the contested case; and ( )

d. A description of the Permit sought. ( )

**03. Informal Disposition.** If an appellant requests informal disposition, the Director will accept written evidence submitted within five (5) State Business Days of the appeal request, or as otherwise agreed by the Director and the appellant. The Director will issue a final written order affirming, reversing or modifying the denial or revocation of the Permit. ( )

**04. Contested Cases.** If an appellant does not request informal disposition, the Director will schedule a hearing and proceed as set forth in Title 67, Chapter 52, Idaho Code. Contested cases will be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**05. Judicial Review.** Judicial review of orders issued in an appeal is provided as set forth in Title 67, Chapter 52, Idaho Code. ( )

**404. -- 499. (RESERVED)**

**500. LIABILITY AND INDEMNIFICATION.**

**01. User Retains Liability.** Individuals, entities, and organizations using the State Capitol Exterior are responsible and liable for all suits, damages, claims or liabilities arising from use of the State Capitol Exterior. The state of Idaho shall have no liability for injury to private property, including posters, placards, banners, signs, equipment, tables, materials, and displays on the State Capitol Exterior. ( )

**02. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. ( )

**03. Indemnification.** Any individual, entity or organization permitted to use the State Capitol Exterior is deemed to agree to indemnify the state of Idaho from and against all claims, demands, actions or causes of action, together with any and all losses, costs or related expenses asserted by any group or persons for bodily injury or damage to property arising out of or in any way connected with the use of the State Capitol Exterior. ( )

**04. No Endorsement.** The grant of a Permit and any action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in an Event or Exhibit. ( )

**501. -- 999. (RESERVED)**

## IDAPA 52 - IDAHO STATE LOTTERY

### 52.01.02 - GAMING RULES OF THE IDAHO STATE LOTTERY COMMISSION

DOCKET NO. 52-0102-1201

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-7714, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 966 and 967](#).

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

DATED this 29th day of October, 2012.

Jeff Anderson, Executive Director  
Idaho State Lottery  
1199 Shoreline Lane  
P. O. Box 6537  
Boise, ID 83707-6537  
Phone: (208) 334-2600  
Fax: (208) 344-2610

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 Section 67-7714, 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 17, 2012.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Last legislative session (2012), the Legislature passed SB 1286, which amended Sections 67-7709 and 67-7710, Idaho Code, to increase the maximum allowable expenditure percentages for charitable bingo and raffle licensees. The Lottery needs to amend applicable administrative rules to coincide with this change in law and render its rules consistent with now-existing law. They are currently inconsistent, instead mirroring the applicable law prior to the passing of SB 1286. This rulemaking amends IDAPA 52.01.02.115.02 and 52.01.02.204 to render the rules consistent with Sections 67-7709 and 67-7710, Idaho Code, so that, per Code, bingo licensees are allowed maximum expenditures for administrative expenses of 18% of gross bingo revenue and raffle licensees are allowed maximum allowable expenses (other than prizes) of 20% on net charitable raffle proceeds. This rulemaking simply renders applicable rules consistent with Idaho Code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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 resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is not feasible. The changes are proposed simply to render applicable rules consistent with applicable Idaho Code. Legislation was passed last session (2012) that increased allowable expenditures for bingo and raffle licensees (**SB 1286**). Corresponding rule changes were not promulgated at that time, but are now required in order to render them consistent with that law change. There is nothing to be negotiated.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff



Anderson, Executive Director, (208) 334-2600.

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 24, 2012.

DATED this 17th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 52-0102-1201

**115. LIMITS ON BINGO OPERATION'S PRIZE PAYOUT RATIOS AND ADMINISTRATIVE EXPENSES (RULE 115).**

**01. Applicability.** All organizations conducting bingo games, whether licensed or unlicensed, must adhere to the required limits of statute and of this rule in dedicating their gross revenues from bingo operations. These limits or percentages, or both, pertain to annual gross revenues during a twelve (12) month license year. See Section 67-7708, Idaho Code. (4-2-08)

~~**02. Maximum Payout Ratio.** A maximum payout ratio of prizes to annual gross revenues of sixty-five percent (65%) is allowed. If agreed by the board of directors of the organization, the ratio of prizes to annual gross revenue may be increased to seventy percent (70%), but any increase in payout ratios above sixty-five percent (65%) must be made up by an equal reduction from the maximum percentage of fifteen percent (15%) that can be allocated to expenses under Section 67-7709(1)(d), Idaho Code. For example, if the board of directors of an organization decides to increase the maximum prize payout ratio by three percent (3%) from sixty-five percent (65%) to sixty-eight percent (68%), then the maximum amount of annual gross revenues that can be allocated to expenses must be reduced by three percent (3%) from fifteen percent (15%) to twelve percent (12%). See Section 67-7709(1)(d), Idaho Code. (4-2-08)~~

**032. Donated Merchandise.** Donated merchandise offered as prizes is not included in the prize amounts paid out when calculating the prize payout ratio. The organization conducting the bingo game must document the value of the donated items, describe the donated items, and list the donated items on the daily reports as prizes. (7-1-97)

**043. Donated Cash Funds Prohibited.** Donated cash may not be offered as prizes in bingo games nor deposited into the separate bingo account. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. REQUIREMENTS FOR DONATION TO CHARITY -- LIMITATION ON EXPENSES (RULE 204).**

At least ~~ninety~~ **eighty** percent (~~90~~**80**%) of the net proceeds from sales of raffle tickets or chances and duck races must be donated to a charitable or nonprofit organization to be used for a charitable purpose. (Net proceeds are defined in Subsection 010.~~29~~**30** of these rules.) The name and address of the charitable or nonprofit organizations awarded these funds must be listed on the annual raffle report submitted to the Lottery. The annual raffle report must also include the charitable purpose for which the charitable donation was used by the charitable organization or non-profit organization. A maximum of ~~ten~~ **twenty** percent (~~10~~**20**%) of net proceeds is allowed for expenses. See Section 67-7710(3), Idaho Code. ~~(4-2-08)~~(    )

## IDAPA 52 - IDAHO STATE LOTTERY

### 52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

DOCKET NO. 52-0103-1202

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-7408(1), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 975 through 986](#).

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

DATED this 29th day of October, 2012.

Jeff Anderson, Executive Director  
Idaho State Lottery  
1199 Shoreline Lane  
P. O. Box 6537  
Boise, ID 83707-6537  
Phone: (208) 334-2600  
Fax: (208) 344-2610

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 Section 67-7408(1), 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 17, 2012.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

An antiquated requirement set forth in rule needs to be revised to reflect the accurate, current practice for audit and review of on-line game drawings and the joint claims process for players claiming joint ownership of a winning lottery ticket needs clarification to more specifically reflect the current required procedure. This proposed rule eliminates an antiquated requirement that the equipment used for on-line game drawings must be inspected before and after drawings. With technological advances over the years, that is not the long-standing practice. Instead, all drawing results are audited and reviewed after each drawing to assure proper operation and lack of tampering or fraud in accordance with industry-standard procedures governing on-line game drawings set by the Multi-State Lottery Association (MUSL). Changes to Rule 204.02.a. and 204.07.e. reflect the current practice. Also, changes to Rule 100.15.d.i. clarify the procedure for processing joint claims on winning lottery tickets in order to avoid disputes over prize winnings payouts.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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 resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the nature of the rule changes are simple in nature in that changes to clarify process for joint claims on winning lottery tickets simply specify more clearly the established required procedure for processing joint claims where there are more than one persons claiming ownership of a winning ticket. Negotiation isn't feasible on this requirement. The rules already require the procedure and the Lottery only seeks to clarify more exactly the procedure. The other proposed change in this rulemaking is also very simple in nature and there aren't identifiable representatives of affected interests. The Lottery seeks elimination of an outdated, antiquated equipment inspection requirement that is obsolete due to technological advances over the years. Instead, the Lottery seeks to revise the rule to reflect current, industry-standard procedures governing on-line game drawings set by the Multi-State Lottery Association

(MUSL).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

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 24, 2012.

DATED this 17th day of August, 2012.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 52-0103-1202**

**100. GENERAL PROVISIONS (RULE 100).**

**01. Purpose.** These rules are established by the Commission to define and regulate the operation and administration of the Lottery and the Commission. (3-26-08)

**02. Lottery Commission.** The Commission is charged with the authority and duty to regulate Lottery activities in the state of Idaho, consistent with the Idaho Constitution and the enabling legislation. The headquarters of the Commission and of the Lottery is in Boise. (3-26-08)

**03. Powers and Duties of the Commission.** (3-26-08)

**a. Rule Promulgation.** The Commission promulgates rules and conditions under which the statewide Lottery will be conducted. Subjects covered in such rules include but need not be limited to: (3-26-08)

i. The types of Lottery games to be conducted; (3-26-08)

ii. The prices of tickets in the Lottery; (3-26-08)

iii. In general the numbers and sizes of prize disbursements, the manner and frequency of prize drawings, and the manner in which payment will be made to holders of winning tickets; (3-26-08)

iv. The locations at which Lottery tickets may be sold, the manner in which they are to

be sold, and contracting with Lottery vendors, retailers and contractors; (3-26-08)

v. The manner in which Lottery sales revenues are to be collected; (3-26-08)

vi. The amount of compensation to be paid to retailers; (3-26-08)

vii. Other areas relating to the efficient and economical operation and administration of a statewide Lottery consonant with the public interest. (3-26-08)

**b.** Delegation to Director. In addition to those duties assigned to the Director in the Act, the Commission may, insofar as is consistent with the Idaho Constitution and the Act, delegate the performance of executive or administrative functions to the Director. (3-26-08)

**04. Time and Place of Meetings.** (3-26-08)

**a.** Regular meetings of the Commission must be held at least quarterly; the date, time, and place will be set by the Commission and, if possible, with at least two (2) weeks' advance notice. The Commission may meet with the Director to make recommendations and set policy, to approve or reject reports of the Director, to adopt rules, and to transact other business. (3-26-08)

**b.** Additional meetings necessary to discharge the business of the Commission may be called from time to time by the chairman or by a quorum of the Commission. (3-26-08)

**05. Open Meeting Law.** All meetings of the Commission shall be held in accordance with Idaho's Open Meeting Law, Sections 67-2340, et seq., Idaho Code, and in accordance with Section 67-7442, Idaho Code. All meetings of the Commission are open to the public, except when executive session is allowed for part of the meeting under the Open Meeting Law.(3-26-08)

**06. Director.** The Director is responsible for the operation of the Lottery and for managing the affairs of the Commission. A Deputy Director designated by the Director may act for the Director in the absence of the Director. If there is a vacancy in the office of Director, the Commission will designate the Deputy Director as Interim Director until the vacancy can be filled. (3-26-08)

**07. Powers and Duties of the Director.** (3-26-08)

**a.** The Director has the authority to implement and execute procedures that he may deem appropriate for the efficient administration of the Lottery. The Director may also recommend rules governing the establishment, administration, and operation of the Lottery to the Commission for its approval; (3-26-08)

**b.** The Director is authorized to employ sufficient staff as may be required to carry out the functions of the Commission and the Lottery; (3-26-08)

**c.** The Director may contract with retailers for the sale of Lottery games and must suspend or terminate any contract in accordance with the provisions of the Act and the rules of the Commission; (3-26-08)

**d.** The Director must continuously study and investigate all matters pertinent to the efficient operation of the Lottery; and (3-26-08)

**e.** The Director must maintain full and complete records of the operation of the Lottery. The Director must report on at least a monthly basis to the Commission and to the governor on the status of the Lottery. (3-26-08)

**f.** The duties and responsibilities of the Director that are not otherwise specified in Idaho law or the rules adopted by the Commission may be maintained as a policy of the Commission for the purpose of establishing a working relationship between the Director and the Commission. (3-26-08)

**08. Lottery Offices.** (3-26-08)

**a.** The principal office of the Lottery is located at 1199 Shoreline Lane, Suite 100, Boise, Idaho 83702. (3-26-08)

**b.** The Lottery may also operate other offices and facilities throughout the state as are appropriate to fulfill its responsibilities under law. (3-26-08)

**09. Lottery Budgets and Financial Statements.** The Director must: (3-26-08)

**a.** Submit quarterly financial statements to the Commission, the governor, the state treasurer, and the legislature. The quarterly financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The quarterly financial statements must be provided within forty-five (45) days of the last day of each quarter. (3-26-08)

**b.** Submit annual financial statements to the Commission, the governor, the state treasurer, and each member of the legislature. The annual financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The annual financial statements must be examined by the state controller or a firm of independent certified public accountants in accordance with generally accepted auditing standards and must be provided within ninety (90) days of the last day of the Lottery's fiscal year. (3-26-08)

**10. Contingency Reserve.** (3-26-08)

**a.** The Director may, with the approval of the Commission, allot from moneys available to pay administrative expenses an amount to be transferred to a contingency reserve established by the Commission. The money allotted can include amounts retained to fund specific future expenses or can be undesignated as to purpose. (3-26-08)

**b.** When the Commission approves a contingency reserve, it must determine the amount necessary for a reasonable contingency reserve. (3-26-08)

c. Upon approval of the Commission, money in the contingency reserve may be authorized to be used for specific purposes of the Lottery or to be used to fund general administrative expenses if there is a revenue shortfall. Expenses funded from the contingency reserve cannot be included with other administrative expenses for purposes of determining compliance with current administrative expenditure limitations. (3-26-08)

**11. Special Drawings.** (3-26-08)

a. The Director may authorize special drawings to award prizes, such as vacation trips, automobiles, or other tangible items in addition to, or in lieu of, cash awards. The Director will determine the nature and number of awards for each special drawing. Special drawings for promotional awards may be held independently of the Lottery's regular prize drawings or may be incorporated therein. The promotional drawings may be cosponsored and conducted in conjunction with Lottery retailers or other independent businesses. In view of the temporary nature and indeterminate frequency of the promotional awards drawings, a press announcement and normal advertising media will be used to inform the public of the rules and prizes for each special drawing. (3-26-08)

b. Notwithstanding the provisions of Paragraph 100.11.a. of this rule, the Director may, at his discretion, award in-lieu equivalent cash awards to the winners of tangible items, in those instances where the Director deems it appropriate. The value of noncash items must be estimated by using either the cost of the item or its fair-market value. (3-26-08)

**12. Retail Drawings.** The Director and his designee may authorize retailers to conduct drawings using non-winning Lottery tickets in conjunction with a particular Lottery game. Such authorization must be in writing, must specify the type of drawing to be conducted and must set forth the methodology to be used in conducting the drawing. (3-26-08)

**13. Retail Ticket Price Discounts.** (3-26-08)

a. Notwithstanding the price adopted for the retail sale of a ticket in the rules for a specific Lottery game, the Commission may offer discounts for the retail sale of Lottery tickets. (3-26-08)

i. Discounts for the retail sale of Lottery tickets may be offered to the public through the use of coupons approved by the Director or by any other method approved by the Director. (3-26-08)

ii. Coupons that offer a discount on the retail price of Lottery tickets must be distributed using methods designed to reach the public. These methods may include, but are not limited to, the use of direct mail, newspaper advertising, or by having coupons available at Lottery offices and retailer locations. (3-26-08)

b. Rules for a promotion conducted by the Lottery using retail ticket discounts must be announced by the Director and made available at the Lottery's offices and retailer locations. (3-26-08)

**14. Allocation of Revenues for Prizes.** (3-26-08)



**a.** Purpose: The primary objective of the Lottery is to produce the maximum amount of net revenues to benefit the public purpose of raising revenue consonant with the dignity of the state and the sensibilities of its citizens. In accomplishing this objective, at least forty-five percent (45%) of the total annual revenues shall be returned in the form of prizes. The Lottery may design and conduct games that return more than forty-five percent (45%) of the revenues received from the sale of tickets in the form of prizes as an incentive to increase the total amount of game sales over the level of sales that otherwise would have been reasonably expected using a lower prize percentage. Games may also be authorized that return less than forty-five percent (45%) of that game's revenues so long as forty-five percent (45%) of the total annual revenues is returned as prizes. (3-26-08)

**b.** Prize payments: In addition to cash prize payments, money set aside by the Lottery and restricted for the payment of prizes is considered in satisfying the requirement of returning at least forty-five percent (45%) of total revenues to the public in the form of prizes. (3-26-08)

**c.** Averaging game prize payments: Notwithstanding the prize structure adopted for a Lottery game, the amount of revenue returned for prizes among all the games offered by the Lottery may be reallocated so long as at least forty-five percent (45%) of the total revenue earned from all games is returned to the public in the form of prizes on an annual basis. The Director must report to the Commission on any reallocations made pursuant to Section 100 o these rules. (3-26-08)

**15. Ownership of Lottery Tickets.** (3-26-08)

**a.** Except for tickets claimed jointly in accordance with the provisions of Paragraph 100.15.d. of this rule, until a name is printed or placed upon a Lottery ticket in the area designated for "name," the ticket is owned by the bearer of the ticket. When a name is placed on the ticket in the place designated for a name, the person whose name appears in that area is the owner of the ticket and is entitled to any prize attributable to the ticket. (3-26-08)

**b.** If more than one (1) name appears on a ticket, the ticket must be claimed in accordance with the joint ownership procedures listed in Paragraph 100.15.d. of this rule. (3-26-08)

**c.** Groups, family units, clubs, or other organizations may claim a winning ticket if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and that number is shown on the claim form. (3-26-08)

**d.** If a ticket is claimed to be owned by two (2) or more people, the following steps will be taken for payment of the prize: (3-26-08)

**i.** All people claiming ownership must complete and sign a [request and release claim form and declare their percentage of the prize prior to processing the claim. After the claim form is submitted to the Lottery, the percentage cannot be amended. The percentages claimed must add up to one hundred percent \(100%\) of the prize.](#) (~~3-26-08~~)( )

**ii.** At least one (1) of the people claiming ownership of the ticket must sign the ticket;

that person's signature must also appear on the ~~request and release~~ **claim** form. ~~(3-26-08)~~( )

iii. The Lottery reserves the right to issue a single prize check instead of multiple prize checks to the owners of a ticket if the value of each individual prize check would be less than fifty dollars (\$50). (3-26-08)

iv. Multiple winners of a Lottery prize will be paid only through the Boise Lottery office. Lottery retailers will not be required to pay more than one (1) winner of a single prize. (3-26-08)

**16. Claims.** (3-26-08)

**a.** Liability. By submitting a claim, the player agrees that the state, the Commission, the Lottery and all officials, officers, and employees of each are discharged from all further liability upon payment of the prize. (3-26-08)

**b.** Publicity. By submitting a claim, the player also agrees that the Lottery may use the prize winner's name and photograph for publicity purposes. (3-26-08)

**c.** Claim period. Prizes may be claimed for a period of one hundred eighty (180) days after the drawing in which the prize was won or from the last day tickets from the specific instant game were sold. Prizes won through an electronic terminal are payable in accordance with the Lottery's rules. If a claim is not made for the prize within the applicable period, the prize money will be added to future prize pools, to be used in addition to prize allotments already allocated, except as provided in Section 67-7433, Idaho Code. (3-26-08)

**d.** Invalid tickets. If a ticket presented to the Lottery is invalid pursuant to the terms of these rules or the specific game rules, the ticket is not entitled to prize payment. (3-26-08)

**e.** Ticket a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature, if a signature space is provided. The person who signs the ticket is considered the owner of the ticket after signing it. Payment of any prize may be made to a person in possession of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the Commission, the Lottery, the Director, and Lottery employees terminates upon payment. (3-26-08)

**f.** Time of prize payment. All prizes will be paid within a reasonable time after a claim is verified by the Lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments is the date the claim is validated and processed, unless a different date is specified for a particular game in these rules or in the specific game rules. Later installment payments will be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The Lottery may, at any time, delay any prize payment in order to review a change in circumstances concerning the prize awarded, the payee, or the claim. (3-26-08)

**g.** Prizes payable for winner's life. If any prize is for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is

the winner, the life of the winner is deemed to be twenty (20) years. (3-26-08)

**17. Prizes Payable After Death of Winner.** All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing a personal representative (or similar person responsible for the prize winner's estate, whether denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

**18. Disability of Prize Winner.** The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings that are or may become due to a person under a disability including, but not limited to, minority, mental deficiency, or physical or mental incapacity. (3-26-08)

**19. Stolen or Lost Tickets.** The Lottery has no responsibility for paying prizes attributable to stolen or lost tickets. (3-26-08)

**20. Effect of Game Rules.** In purchasing a ticket the player agrees to comply with Title 67, Chapter 74, Idaho Code, these rules, the specific game rules, Lottery instructions and procedures, and the final decisions of the Lottery. The Lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes will be final and binding upon all participants in the Lottery. If a dispute between the Lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the Lottery may, solely at the Director's option, replace the ticket with an unplayed ticket of an equivalent price from any game or refund the price of the ticket. This will be the sole and exclusive remedy of the player. (3-26-08)

**21. Disputed Prizes.** If there is a dispute, or it appears that there may a dispute concerning payment or ownership of any prize or any other legal issue involving the prize, the Lottery may refrain from making payment of the prize pending a final determination by the Lottery or by a court of competent jurisdiction as to the proper payment of the prize. (3-26-08)

**22. Sale of Lottery Tickets.** Lottery tickets may be sold for cash, check, money order, credit card, electronic funds transfer, or debit card. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. ON-LINE COMPUTER GAMES (RULE 204).**

**01. On-Line Games -- Authorized -- Director's Authority.** The Commission hereby

authorizes the Director to select and operate on-line games which meet the criteria set forth in these rules. (3-26-08)

**02. Definitions.** As used in Rule 204 these terms have the following definitions: (3-26-08)

**a.** “Drawing.” The procedure determined by the Director by which the Lottery selects the winning combination in accordance with the rules of the game. Drawings are open to the public. ~~The equipment used in any drawing must be inspected by the Director of Security or his designee both before and after the drawing.~~ (5-8-09)( )

**b.** “On-line Game.” A Lottery game in which a player selects a combination of numbers or symbols, the type of game and amount of play, and the drawing date by use of a computer. In return for paying the appropriate fee, the player receives a computer-generated ticket with the player’s selection printed on it. Each ticket bearer whose valid ticket includes a winning combination will be entitled to a prize if claim is submitted within the specified time period. (3-26-08)

**c.** “On-line Retailer.” A person or business authorized by the Lottery to sell on-line tickets. (3-26-08)

**d.** “On-line Terminal (OLT).” The computer hardware by which an on-line retailer or player enters the combination selected by the player and by which on-line tickets are generated and claims are validated. (3-26-08)

**e.** “On-line Ticket.” A computer-generated ticket issued by an on-line terminal to a player as a receipt for the combination a player has selected. That ticket is the only acceptable evidence of the combination of numbers or symbols selected. (3-26-08)

**f.** “Ticket Bearer.” The person who has signed the on-line ticket or who has possession of an unsigned ticket. (3-26-08)

**g.** “Validation.” The process of determining whether an on-line ticket presented for payment is a winning ticket. (3-26-08)

**h.** “Winning Combination.” One (1) or more numbers or symbols randomly selected by the State Lottery or its designee in a public drawing. (3-26-08)

**03. Distribution of Tickets.** (3-26-08)

**a.** Tickets will be sold by retailers selected by the Director. (3-26-08)

**b.** The Director is authorized to arrange for the distribution of OLTs, player-activated terminals (PATs), ticket stock, and supplies to certificated retailers. (3-26-08)

**04. Sale of Tickets.** (3-26-08)

**a.** No person other than a retailer under a contract for the sale of tickets with the

Lottery may sell on-line Lottery tickets, except that nothing in this section will be construed to prevent a person who may lawfully purchase tickets from making a gift of Lottery tickets to another. (3-26-08)

**b.** Tickets may not be sold at a location other than the address listed on the retailer's contract with the Lottery. (3-26-08)

**c.** Nothing in this section shall be construed to prohibit the Director from designating certain of its agents and employees to sell Lottery tickets directly to the public. (3-26-08)

**05. On-Line Games Criteria.** (3-26-08)

**a.** The base price of an on-line ticket will not be less than fifty cents (\$.50), except to the extent of discounts authorized by the Commission. (3-26-08)

**b.** The price for a ticket in any particular on-line game will be set out in the game rules adopted by the Commission for that game. No person may sell a ticket at a price other than that established in accordance with these rules. On the average, the total of all prizes available to be won in an on-line game shall not be less than forty-five percent (45%) of the on-line game's projected revenue. (3-26-08)

**c.** The manner and frequency of drawings may vary with the type of on-line game. (3-26-08)

**d.** The times, locations, and drawing procedures will be determined by the Director. (3-26-08)

**e.** A ticket bearer entitled to a prize must submit the winning ticket as specified by the Director. The winning ticket must be validated by the Lottery or an on-line retailer through use of the validation number and any other means specified by the Director. (3-26-08)

**06. Payment of Prizes.** (3-26-08)

**a.** To claim an on-line game prize of less than six hundred dollars (\$600) the claimant may present the winning on-line ticket to any on-line retailer, or to the Boise Lottery office: (3-26-08)

**i.** If the claim is presented to an on-line retailer, the on-line retailer must validate the claim and, if determined to be a winning ticket, pay the amount due the claimant. If the on-line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

**ii.** If the claim is presented to the Boise Lottery office, the claimant may be required to complete a claim form and submit it with the winning ticket, either by mail or in person. Upon

determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant.

(3-26-08)

**b.** To claim an on-line prize of six hundred dollars (\$600) or more, the claimant must obtain and complete a claim form and submit it with the winning ticket to the Boise Lottery office by mail or in person. Prizes of six hundred dollars (\$600) or more can be paid only from the Boise Lottery office. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. The amount due will be calculated according to the rules adopted for the particular on-line game. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant.

(3-26-08)

**c.** All prizes must be claimed within one hundred eighty (180) days from the drawing in which the prize was won. If the final day of the one hundred eighty (180) day period falls on a Saturday, Sunday or a state holiday, the claim period will be extended to the end of the next business day. Any prize not claimed within the specified period will be forfeited and placed into the State Lottery account.

(3-26-08)

**07. Drawings and End of Sales Prior to Drawings.**

(3-26-08)

**a.** Drawings will be conducted in a location and at days and times designated by the Director.

(3-26-08)

**b.** For each type of on-line game, the Director will establish a time before the drawing for the end of sales.

(3-26-08)

**c.** The Director will designate a Drawing Manager who will oversee each drawing. The Drawing Manager must attest that the drawing was conducted in accordance with proper drawing procedures at the end of each drawing.

(3-26-08)

**d.** The Director will designate the type of equipment to be used and will establish procedures to randomly select the winning combination for each type of on-line game. Drawing procedures will include provisions for the substitution of backup drawing equipment if the primary drawing equipment malfunctions or fails for any reason.

(3-26-08)

**e.** The equipment used to determine the winning combination will not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The ~~equipment must be tested before and~~ drawing results are audited and reviewed after each drawing to assure proper operation and lack of tampering or fraud. Drawings will not be held until all pre-inspection checks are completed. No prizes will be paid until after all post-inspection checks have been completed. ~~(3-26-08)~~( )

**f.** All drawings may be broadcast live on television, provided the facilities for such broadcasts are available and operational and can be done at a reasonable cost.

(5-8-09)

**g.** The Director will establish procedures governing the conduct of drawings for each type of on-line game. The procedures must include provisions for deviations that include but are not limited to: (3-26-08)

i. Malfunction of the drawing equipment before determination of the winning combination; (3-26-08)

ii. Fouled drawing; (3-26-08)

iii. Delayed drawing; and (3-26-08)

iv. Other equipment, facility or personnel difficulties. (3-26-08)

**h.** If a deviation occurs, the drawing will be completed under the supervision of the Lottery or its designee. The winning combination will be provided to the television network for dissemination to the public. (5-8-09)

**i.** If, during any live-broadcast drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all numbers or symbols, a “foul” will be called by the Drawing Manager or the Lottery’s designee. Any number drawn before a “foul” is called will stand and be deemed official after passing inspection and certification by the Drawing Manager or the Lottery’s designee. (3-26-08)

**j.** The Director must delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has occurred. Payment will be made after an investigation is completed and the drawing approved by the Drawing Manager or the Lottery’s designee. If the drawing is not approved, it will be void and another drawing will be conducted to determine the actual winner. (3-26-08)

**08. Validation Requirements.** (3-26-08)

**a.** To be a valid winning on-line ticket, all of the following conditions must be met: (3-26-08)

i. All printing on the ticket must be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and the date printed on the ticket. (3-26-08)

ii. The ticket must be intact. (3-26-08)

iii. The ticket must not be mutilated, altered, or tampered with in any manner. (3-26-08)

iv. The ticket cannot be counterfeit or an exact duplicate of another winning ticket. (3-26-08)

v. The ticket must have been issued by an authorized on-line retailer or dispensed by a player-activated terminal in an authorized manner. (3-26-08)

- vi. The ticket must not have been stolen or cancelled. (3-26-08)
- vii. The ticket must not have been previously paid. (3-26-08)
- viii. The ticket must pass all other confidential security checks of the Lottery. (3-26-08)
- ix. If the prize is for six hundred dollars (\$600) or more, the ticket must be signed. (3-26-08)

**b.** A ticket failing any of the validation requirements listed in Paragraph 204.08.a. of this rule is invalid and ineligible for a prize. The final decision on whether a prize is paid will be made by the Director. (3-26-08)

**c.** If there is a dispute between the Director and a claimant whether a ticket is a winning ticket, and if the Director determines that the ticket is not valid and a prize is not paid, the Director may replace the disputed ticket with a ticket of equivalent sales price for a future drawing of the same type of game. This will be the sole and exclusive remedy of the claimant. (3-26-08)

**d.** If a defective on-line ticket is purchased, the only responsibility or liability of the Lottery or of the on-line retailer is the replacement of the defective on-line ticket with another on-line ticket of equivalent value for a future drawing of the same type of game. (3-26-08)

**09. Retailer Duties.** Retailers with an on-line terminal (OLT) must perform the following duties: (3-26-08)

**a.** Pay costs associated with providing a telephone line or internet or similar connection that must be located as specified by the Lottery. Payment of the telephone line or internet or similar connection is nonrefundable after installation, except if the Lottery denies, through no fault of retailer, the installation of the on-line terminal. (5-8-09)

**b.** Pay the Lottery for the local monthly telephone or internet or similar charges per OLT as specified by the Lottery. The Lottery will pay for the mileage charges (if any) between the retailer's location and the Lottery's central site. (3-26-08)

**c.** Hold funds generated from the sale of on-line tickets in trust for the Lottery. At a time specified by the Lottery, the retailer must pay these funds to the Lottery plus the monthly communications charge specified above in Paragraph 204.09.b. of this rule, less: (3-26-08)

- i. Prizes paid; (3-26-08)
- ii. Any credit; and (3-26-08)
- iii. The retailer discount. (3-26-08)

**d.** Locate the OLT within the retailer's premises at a point-of-sale location approved by the Lottery. The retailer is prohibited from moving an OLT unless the retailer follows the



procedures established by the Director, including reimbursing the State Lottery for any telephone or internet or similar charges associated with the change of OLT location if the retailer requested the change. (3-26-08)

**e.** Provide dedicated AC power to within approximately five (5) feet of the terminal. Dedicated AC power means that there is no other equipment on the line that is to be used for the on-line terminal. The retailer is responsible for all costs associated with providing dedicated AC power. The Lottery will provide a schematic of outlet requirements to the retailer's electrical contractor. (3-26-08)

**f.** Sell all Lottery games, including but not limited to instant game tickets offered by the Lottery. The retailer agrees to continue the sale of instant tickets from all cash registers or other points of purchase. (3-26-08)

**g.** Conduct the sale of on-line tickets during all hours and days that the retailer's business is open and the on-line system is functioning. The retailer must post the hours that redemption of winning tickets may take place if these hours are different from the retailer's normal business hours. The retailer must monitor ticket supply levels and give timely notice when any item is in short supply. (3-26-08)

**h.** Post winning numbers prominently where tickets are sold as soon as possible following the drawing. (3-26-08)

**i.** Provide secure storage for OLT supplies and a secure area for the OLT. (3-26-08)

**j.** Exercise due diligence in the operation of the OLT and immediately notify the Lottery and the central computer facility of any telephone line, internet, radio, or OLT malfunction, such as the issuance of invalid on-line Lottery ticket, inability to sell or redeem an on-line ticket, and non-issuance of an on-line ticket. The retailer is prohibited from performing mechanical or electrical maintenance on the OLT. (3-26-08)

**k.** Replace ribbons and on-line or instant ticket stock and clear paper jams as required for the OLT per the instructions provided by the Lottery. (3-26-08)

**l.** Pay, without reimbursement, all electricity charges in connection with the operation of OLT. (3-26-08)

**10. Payment of Prizes by On-Line Retailers.** (3-26-08)

**a.** An on-line retailer must pay to the ticket bearer on-line games prizes of less than six hundred dollars (\$600) for any validated claims presented to that on-line retailer. These prizes must be paid during all normal business hours of the on-line retailer, unless redemption hours differ from normal business hours that have been posted pursuant to Paragraph 204.09.g. of this rule, provided, that the on-line system is operational and claims can be validated. (3-26-08)

**b.** An on-line retailer may pay prizes in cash or by business check, certified check, money order, or any combination thereof. An on-line retailer that pays a prize with a check that is dishonored may be subject to suspension or termination of its contract. (3-26-08)

**11. Retailer Settlement.** (3-26-08)

**a.** The Director may require on-line retailers to establish an account for deposit of monies derived from on-line games with a financial institution that has the capability of electronic funds transfer (EFT). (3-26-08)

**b.** The amount deposited must be sufficient to cover monies due the Lottery. The Lottery will withdraw by EFT the amount due the Lottery on the day specified by the Director. If the day specified for withdrawal falls on a state holiday, withdrawal may be delayed until the next business day. (3-26-08)

**12. Prize Rights Unassignable.** No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and that any person may be paid the prize to which the winner is entitled pursuant to an appropriate judicial order. The Director will be discharged of all liability upon payment of a prize pursuant to this rule. (3-26-08)

**13. Payment of Prizes to Persons Under Eighteen Years of Age.** If a person entitled to a prize for a winning ticket is under the age of eighteen (18) years, the Director may direct payment of the prize to an adult member of the minor's family or to the minor's guardian by a check or draft payable to the adult member of the minor's family or to the minor's guardian. The adult member of the minor's family or the minor's guardian will have the same duties and powers as a person designated as a custodian in accordance with Idaho Law. For purposes of this Subsection the terms "adult member of a minor's family" and "guardian of a minor" have the same meaning as in the Idaho Gifts to Minors Law. The Director will be discharged of all liability upon payment of a prize to a minor pursuant to this rule. (3-26-08)

**14. Prizes Payable After Death or Disability of Owner.** (3-26-08)

**a.** All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing of a personal representative (or similar person responsible for the prize winner's estate, whether denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

**b.** The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee of any prize winnings that are or may be due to a person under a disability including, but not limited to, minority, mental deficiency, physical or mental incapacity. (3-26-08)

**15. Discharge of State Lottery Upon Payment.** The state of Idaho, its agents, officers, employees and representatives, the Lottery, its Director, agents, officers, employees and representatives shall be discharged of all liability upon payment of a prize or any one (1)

installment thereof to the holder of any winning Lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on a winning Lottery ticket and the information on the claim form, the Lottery may rely on the claim form after the ticket for which it has been filed has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The Lottery's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes will be final and binding upon all participants in the Lottery unless otherwise provided by law or these rules. If a question arises concerning the winning ticket, a claim form, the payment, or the awarding of any prize, the Lottery may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. (3-26-08)

**16. Disclosure.** The Lottery may use the names, addresses, and photographs of winners in any Lottery promotional or publicity campaign. The address used will not contain the winner's street or house number without the winner's consent. The Lottery may condition payment of the prize upon agreement to these terms and conditions. (3-26-08)

## IDAPA 52 - IDAHO STATE LOTTERY

### 52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

DOCKET NO. 52-0103-1203

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-7408(1)(e), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the November 7, 2012 Idaho Administrative Bulletin, [Vol. 12-11, pages 54 through 60](#).

**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:  
N/A

The Lottery anticipates no negative fiscal impact. The requested game type will allow the Lottery to enhance existing offerings in the field, and potentially augment sales to current non-traditional, social environments.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

DATED this 29<sup>th</sup> day of November, 2012.

Jeff Anderson, Executive Director  
Idaho State Lottery  
1199 Shoreline Lane  
P. O. Box 6537  
Boise, ID 83707-6537  
Phone: (208) 334-2600  
Fax: (208) 344-2610

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 Section 67-7408(1)(e), 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 November 21, 2012.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Lottery offers many different play styles, from draw and Scratch games to PullTabs. This rule allows the Lottery to include a terminal produced Scratch style game in our current portfolio, which will appeal to social environment retailers and other non-traditional locations. The games are designed to be played on the Lottery's new player operated vending machine, the MP, which currently sells only draw tickets. The purpose of the machine is to reduce lines and speed transactions in high volume retail locations and improve the purchasing experience for customers and retailers. The change requested allows for a terminal game, which is structured like a Scratch game, with a finite number of tickets, pools and assigned pack and ticket numbers, but delivers the play via a multi-purpose vending machine, or MP.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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 resulting from this rulemaking: N/A

The Lottery anticipates no negative fiscal impact. The requested game type will allow the Lottery to enhance existing offerings in the field, and potentially augment sales to current non-traditional, social environments.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 5, 2012 Idaho Administrative Bulletin, [Vol. 12-9, page 218](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the

following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

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 November 28, 2012.

DATED this 2nd day of October, 2012.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 52-0103-1203**

**204. ON-LINE COMPUTER GAMES (RULE 204).**

**01. On-Line Games -- Authorized -- Director's Authority.** The Commission hereby authorizes the Director to select and operate on-line games which meet the criteria set forth in these rules. (3-26-08)

**02. Definitions.** As used in Rule 204 these terms have the following definitions: (3-26-08)

**a.** "Drawing." The procedure determined by the Director by which the Lottery selects the winning combination in accordance with the rules of the game. Drawings are open to the public. The equipment used in any drawing must be inspected by the Director of Security or his designee both before and after the drawing. (5-8-09)

**b.** "On-line Game." ( )

**i.** A Lottery game in which a player selects a combination of numbers or symbols, the type of game and amount of play, and the drawing date by use of a computer. In return for paying the appropriate fee, the player receives a computer-generated ticket with the player's selection printed on it. Each ticket bearer whose valid ticket includes a winning combination will be entitled to a prize if claim is submitted within the specified time period. (3-26-08)

**ii.** On-line terminal (OLT) instant ticket game having characteristics as defined in Paragraphs 202.02.a., 202.02.b., 202.02.d. and 202.02.i. of these rules. ( )

**c.** "On-line Retailer." A person or business authorized by the Lottery to sell on-line tickets. (3-26-08)

**d.** "On-line Terminal (OLT)." The computer hardware by which an on-line retailer or

player enters the combination selected by the player and by which on-line tickets are generated and claims are validated. (3-26-08)

**e.** “On-line Ticket.” A computer-generated ticket issued by an on-line terminal to a player as a receipt for the combination a player has selected. That ticket is the only acceptable evidence of the combination of numbers or symbols selected. (3-26-08)

**f.** “Ticket Bearer.” The person who has signed the on-line ticket or who has possession of an unsigned ticket. (3-26-08)

**g.** “Validation.” The process of determining whether an on-line ticket presented for payment is a winning ticket. (3-26-08)

**h.** “Winning Combination.” One (1) or more numbers or symbols randomly selected by the State Lottery or its designee in a public drawing. (3-26-08)

**03. Distribution of Tickets.** (3-26-08)

**a.** Tickets will be sold by retailers selected by the Director. (3-26-08)

**b.** The Director is authorized to arrange for the distribution of OLTs, player-activated terminals (PATs), ticket stock, and supplies to certificated retailers. (3-26-08)

**04. Sale of Tickets.** (3-26-08)

**a.** No person other than a retailer under a contract for the sale of tickets with the Lottery may sell on-line Lottery tickets, except that nothing in this section will be construed to prevent a person who may lawfully purchase tickets from making a gift of Lottery tickets to another. (3-26-08)

**b.** Tickets may not be sold at a location other than the address listed on the retailer’s contract with the Lottery. (3-26-08)

**c.** Nothing in this section shall be construed to prohibit the Director from designating certain of its agents and employees to sell Lottery tickets directly to the public. (3-26-08)

**05. On-Line Games Criteria.** (3-26-08)

**a.** The base price of an on-line ticket will not be less than fifty cents (\$.50), except to the extent of discounts authorized by the Commission. (3-26-08)

**b.** The price for a ticket in any particular on-line game will be set out in the game rules adopted by the Commission for that game. No person may sell a ticket at a price other than that established in accordance with these rules. On the average, the total of all prizes available to be won in an on-line game shall not be less than forty-five percent (45%) of the on-line game’s projected revenue. (3-26-08)

**c.** The manner and frequency of drawings may vary with the type of on-line game as

defined in Subparagraph 204.02.b.i. of these rules.

~~(3-26-08)~~( )

- d.** The times, locations, and drawing procedures will be determined by the Director. (3-26-08)

**e.** OLT instant ticket game as defined in Subparagraph 204.02.b.ii. of these rules will operate with a finite number of tickets per game and a predetermined and guaranteed prize structure approved by the Director. ( )

**ef.** A ticket bearer entitled to a prize must submit the winning ticket as specified by the Director. The winning ticket must be validated by the Lottery or an on-line retailer through use of the validation number and any other means specified by the Director. (3-26-08)

**06. Payment of Prizes.** (3-26-08)

**a.** To claim an on-line game prize of less than six hundred dollars (\$600) the claimant may present the winning on-line ticket to any on-line retailer, or to the Boise Lottery office: (3-26-08)

**i.** If the claim is presented to an on-line retailer, the on-line retailer must validate the claim and, if determined to be a winning ticket, pay the amount due the claimant. If the on-line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

**ii.** If the claim is presented to the Boise Lottery office, the claimant may be required to complete a claim form and submit it with the winning ticket, either by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

**b.** To claim an on-line prize of six hundred dollars (\$600) or more, the claimant must obtain and complete a claim form and submit it with the winning ticket to the Boise Lottery office by mail or in person. Prizes of six hundred dollars (\$600) or more can be paid only from the Boise Lottery office. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. The amount due will be calculated according to the rules adopted for the particular on-line game. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

**c.** All prizes must be claimed within one hundred eighty (180) days from the drawing in which the prize was won. If the final day of the one hundred eighty (180) day period falls on a



Saturday, Sunday or a state holiday, the claim period will be extended to the end of the next business day. Any prize not claimed within the specified period will be forfeited and placed into the State Lottery account. (3-26-08)

**07. Drawings and End of Sales Prior to Drawings.** (3-26-08)

**a.** Drawings will be conducted in a location and at days and times designated by the Director. (3-26-08)

**b.** For each type of on-line game, the Director will establish a time before the drawing for the end of sales. (3-26-08)

**c.** The Director will designate a Drawing Manager who will oversee each drawing. The Drawing Manager must attest that the drawing was conducted in accordance with proper drawing procedures at the end of each drawing. (3-26-08)

**d.** The Director will designate the type of equipment to be used and will establish procedures to randomly select the winning combination for each type of on-line game. Drawing procedures will include provisions for the substitution of backup drawing equipment if the primary drawing equipment malfunctions or fails for any reason. (3-26-08)

**e.** The equipment used to determine the winning combination will not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The equipment must be tested before and after each drawing to assure proper operation and lack of tampering or fraud. Drawings will not be held until all pre-inspection checks are completed. No prizes will be paid until after all post-inspection checks have been completed. (3-26-08)

**f.** All drawings may be broadcast live on television, provided the facilities for such broadcasts are available and operational and can be done at a reasonable cost. (5-8-09)

**g.** The Director will establish procedures governing the conduct of drawings for each type of on-line game. The procedures must include provisions for deviations that include but are not limited to: (3-26-08)

**i.** Malfunction of the drawing equipment before determination of the winning combination; (3-26-08)

**ii.** Fouled drawing; (3-26-08)

**iii.** Delayed drawing; and (3-26-08)

**iv.** Other equipment, facility or personnel difficulties. (3-26-08)

**h.** If a deviation occurs, the drawing will be completed under the supervision of the Lottery or its designee. The winning combination will be provided to the television network for dissemination to the public. (5-8-09)

**i.** If, during any live-broadcasted drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all numbers or symbols, a “foul” will be called by the Drawing Manager or the Lottery’s designee. Any number drawn before a “foul” is called will stand and be deemed official after passing inspection and certification by the Drawing Manager or the Lottery’s designee. (3-26-08)

**j.** The Director must delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has occurred. Payment will be made after an investigation is completed and the drawing approved by the Drawing Manager or the Lottery’s designee. If the drawing is not approved, it will be void and another drawing will be conducted to determine the actual winner. (3-26-08)

**08. Validation Requirements.** (3-26-08)

**a.** To be a valid winning on-line ticket, all of the following conditions must be met: (3-26-08)

**i.** All printing on the ticket must be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and the date printed on the ticket. (3-26-08)

**ii.** The ticket must be intact. (3-26-08)

**iii.** The ticket must not be mutilated, altered, or tampered with in any manner. (3-26-08)

**iv.** The ticket cannot be counterfeit or an exact duplicate of another winning ticket. (3-26-08)

**v.** The ticket must have been issued by an authorized on-line retailer or dispensed by a player-activated terminal in an authorized manner. (3-26-08)

**vi.** The ticket must not have been stolen or cancelled. (3-26-08)

**vii.** The ticket must not have been previously paid. (3-26-08)

**viii.** The ticket must pass all other confidential security checks of the Lottery. (3-26-08)

**ix.** If the prize is for six hundred dollars (\$600) or more, the ticket must be signed. (3-26-08)

**b.** A ticket failing any of the validation requirements listed in Paragraph 204.08.a. of this rule is invalid and ineligible for a prize. The final decision on whether a prize is paid will be made by the Director. (3-26-08)

**c.** If there is a dispute between the Director and a claimant whether a ticket is a winning ticket, and if the Director determines that the ticket is not valid and a prize is not paid, the Director may replace the disputed ticket with a ticket of equivalent sales price for a future drawing of the same type of game. This will be the sole and exclusive remedy of the claimant.

(3-26-08)

**d.** If a defective on-line ticket is purchased, the only responsibility or liability of the Lottery or of the on-line retailer is the replacement of the defective on-line ticket with another on-line ticket of equivalent value for a future drawing of the same type of game. (3-26-08)

**09. Retailer Duties.** Retailers with an on-line terminal (OLT) must perform the following duties: (3-26-08)

**a.** Pay costs associated with providing a telephone line or internet or similar connection that must be located as specified by the Lottery. Payment of the telephone line or internet or similar connection is nonrefundable after installation, except if the Lottery denies, through no fault of retailer, the installation of the on-line terminal. (5-8-09)

**b.** Pay the Lottery for the local monthly telephone or internet or similar charges per OLT as specified by the Lottery. The Lottery will pay for the mileage charges (if any) between the retailer's location and the Lottery's central site. (3-26-08)

**c.** Hold funds generated from the sale of on-line tickets in trust for the Lottery. At a time specified by the Lottery, the retailer must pay these funds to the Lottery plus the monthly communications charge specified above in Paragraph 204.09.b. of this rule, less: (3-26-08)

i. Prizes paid; (3-26-08)

ii. Any credit; and (3-26-08)

iii. The retailer discount. (3-26-08)

**d.** Locate the OLT within the retailer's premises at a point-of-sale location approved by the Lottery. The retailer is prohibited from moving an OLT unless the retailer follows the procedures established by the Director, including reimbursing the State Lottery for any telephone or internet or similar charges associated with the change of OLT location if the retailer requested the change. (3-26-08)

**e.** Provide dedicated AC power to within approximately five (5) feet of the terminal. Dedicated AC power means that there is no other equipment on the line that is to be used for the on-line terminal. The retailer is responsible for all costs associated with providing dedicated AC power. The Lottery will provide a schematic of outlet requirements to the retailer's electrical contractor. (3-26-08)

**f.** Sell all Lottery games, including but not limited to instant game tickets offered by the Lottery. The retailer agrees to continue the sale of instant tickets from all cash registers or other points of purchase. (3-26-08)

**g.** Conduct the sale of on-line tickets during all hours and days that the retailer's business is open and the on-line system is functioning. The retailer must post the hours that redemption of winning tickets may take place if these hours are different from the retailer's normal business hours. The retailer must monitor ticket supply levels and give timely notice when

any item is in short supply. (3-26-08)

**h.** Post winning numbers prominently where tickets are sold as soon as possible following the drawing. (3-26-08)

**i.** Provide secure storage for OLT supplies and a secure area for the OLT. (3-26-08)

**j.** Exercise due diligence in the operation of the OLT and immediately notify the Lottery and the central computer facility of any telephone line, internet, radio, or OLT malfunction, such as the issuance of invalid on-line Lottery ticket, inability to sell or redeem an on-line ticket, and non-issuance of an on-line ticket. The retailer is prohibited from performing mechanical or electrical maintenance on the OLT. (3-26-08)

**k.** Replace ribbons and on-line or instant ticket stock and clear paper jams as required for the OLT per the instructions provided by the Lottery. (3-26-08)

**l.** Pay, without reimbursement, all electricity charges in connection with the operation of OLT. (3-26-08)

**10. Payment of Prizes by On-Line Retailers.** (3-26-08)

**a.** An on-line retailer must pay to the ticket bearer on-line games prizes of less than six hundred dollars (\$600) for any validated claims presented to that on-line retailer. These prizes must be paid during all normal business hours of the on-line retailer, unless redemption hours differ from normal business hours that have been posted pursuant to Paragraph 204.09.g. of this rule, provided, that the on-line system is operational and claims can be validated. (3-26-08)

**b.** An on-line retailer may pay prizes in cash or by business check, certified check, money order, or any combination thereof. An on-line retailer that pays a prize with a check that is dishonored may be subject to suspension or termination of its contract. (3-26-08)

**11. Retailer Settlement.** (3-26-08)

**a.** The Director may require on-line retailers to establish an account for deposit of monies derived from on-line games with a financial institution that has the capability of electronic funds transfer (EFT). (3-26-08)

**b.** The amount deposited must be sufficient to cover monies due the Lottery. The Lottery will withdraw by EFT the amount due the Lottery on the day specified by the Director. If the day specified for withdrawal falls on a state holiday, withdrawal may be delayed until the next business day. (3-26-08)

**12. Prize Rights Unassignable.** No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and that any person may be paid the prize to which the winner is entitled pursuant to an appropriate judicial order. The Director will be discharged of all liability upon payment of a prize pursuant to this rule. (3-26-08)

**13. Payment of Prizes to Persons Under Eighteen Years of Age.** If a person entitled to a prize for a winning ticket is under the age of eighteen (18) years, the Director may direct payment of the prize to an adult member of the minor's family or to the minor's guardian by a check or draft payable to the adult member of the minor's family or to the minor's guardian. The adult member of the minor's family or the minor's guardian will have the same duties and powers as a person designated as a custodian in accordance with Idaho Law. For purposes of this Subsection the terms "adult member of a minor's family" and "guardian of a minor" have the same meaning as in the Idaho Gifts to Minors Law. The Director will be discharged of all liability upon payment of a prize to a minor pursuant to this rule. (3-26-08)

**14. Prizes Payable After Death or Disability of Owner.** (3-26-08)

**a.** All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing of a personal representative (or similar person responsible for the prize winner's estate, whether denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

**b.** The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee of any prize winnings that are or may be due to a person under a disability including, but not limited to, minority, mental deficiency, physical or mental incapacity. (3-26-08)

**15. Discharge of State Lottery Upon Payment.** The state of Idaho, its agents, officers, employees and representatives, the Lottery, its Director, agents, officers, employees and representatives shall be discharged of all liability upon payment of a prize or any one (1) installment thereof to the holder of any winning Lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on a winning Lottery ticket and the information on the claim form, the Lottery may rely on the claim form after the ticket for which it has been filed has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The Lottery's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes will be final and binding upon all participants in the Lottery unless otherwise provided by law or these rules. If a question arises concerning the winning ticket, a claim form, the payment, or the awarding of any prize, the Lottery may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. (3-26-08)

**16. Disclosure.** The Lottery may use the names, addresses, and photographs of winners in any Lottery promotional or publicity campaign. The address used will not contain the winner's street or house number without the winner's consent. The Lottery may condition payment of the prize upon agreement to these terms and conditions. (3-26-08)

## **IDAPA 54 - OFFICE OF THE STATE TREASURER**

### **54.03.01 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES**

**DOCKET NO. 54-0301-1201**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 14-532 and 14-539, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 987 through 990](#).

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cozette Walters, Administrator, Unclaimed Property, at (208) 332-2979.

DATED this 2nd day of November, 2012.

Cozette Walters  
Administrator, Unclaimed Property  
Office of the State Treasurer  
304 N. 8th St.  
P. O. Box 83720  
Boise, ID 83720-9101  
Phone: (208) 332-2979  
Fax: (208) 332-2970

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE 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 14-532 and 14-539, 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 17, 2012.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The revisions are necessary to clarify complicated language or to reflect existing procedures making it easier for Idaho citizens to understand Title 14, Chapter 5, Idaho Code. The revisions provide clarifications and a better understanding of existing rules and procedures.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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 resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the revisions are limited and provide clarifications of existing rules and procedures, including the elimination and simplification of several rules. All Idaho citizens are impacted by the program and there is no group or organization representing affected citizens.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cozette Walters, Administrator, Unclaimed Property, at (208) 332-2979.

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 24,

2012.

DATED this 10th day of September, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 54-0301-1201

**002. WRITTEN INTERPRETATIONS (RULE 002).**

This agency ~~has~~ may have written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection ~~and copying~~ at the main unclaimed property office of the State Treasurer. See Rule 005 of these rules for the main office address. (3-15-02)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. UNCLAIMED EXPENSES AND CHECKS (RULE 006).**

Intangible property required to be reported and delivered to the state includes outstanding or unclaimed expense and vendor checks, payroll checks, claim checks or drafts or other miscellaneous checks and drafts. The term “check” also includes items referred to as “warrants.” The term “payroll” includes commissions and any other form of monetary payment to an employee in exchange for services. If the payee has disclaimed ownership, the holder must retain a confirmation letter signed by the payee stating that the amount the holder is showing for them is not due and owing and is to remain on the books of the holder for audit purposes. (7-1-98)(    )

~~01: **Confirmation.** A confirmation letter by the payee which claims that the amount is due and owing to the payee should be accompanied by a facsimile instrument issued by the holder in payment of the amount due and owing before the account will be considered not abandoned.~~ (8-24-94)

~~02: **Clearance.** A confirmation letter signed by the payee which states that the amount is not due and owing to the payee will be deemed sufficient to relieve the holder of the liability even if the check with which the holder paid the liability has not yet cleared the holder's bank.~~ (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**



**012. GENERAL RULES FOR TAKING CUSTODY OF UNCLAIMED PROPERTY (RULE 012).**

**01. In General.** Under the rule established by the United States Supreme Court in *Texas v. New Jersey*, 379 U.S. 674 (1965), a holder of unclaimed property must report and remit that property to the state of the owner's last known address as shown in the holder's books and records. If the holder does not have a last known address for the owner, then the holder must report and remit the property to the state where the holder is incorporated. The unclaimed property laws of the state where the property is reportable govern the holding period and what is reportable. (7-1-98)

**02. Reciprocity Agreements.** A holder located in Idaho may report and remit property reportable to another state to the administrator of the Idaho Unclaimed Property Act if ~~the administrator has entered into a reciprocity agreement with~~ there are ten (10) or fewer properties to report with a value of one thousand dollars (\$1,000) or less, and the other state. ~~A list of those states that the administrator has entered into~~ allows for reciprocity ~~agreements with can be obtained from the office of the State Treasurer.~~ If property reportable to another state is reported and remitted to the administrator, that property will be transferred to the other state in accordance with the reciprocity agreement. (7-1-98)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. REPORT OF ABANDONED PROPERTY (RULE 015).**

**01. Incomplete Report.** A report filed with the office of the State Treasurer must meet the requirements of a valid tax return as set out in Section 14-517, Idaho Code. A report that does not meet the statutory requirements may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code. (5-8-09)

**02. Voluntary Payments of Unclaimed Property.** A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of fifty dollars (\$50) or less to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code, as long as the owner name or other identifying information about the rightful owner is included in the report. Aggregate amounts of unclaimed property will not be accepted. The administrator will remit the funds to the appropriate state. (3-20-04)( )

**03. Underlying Shares and Cumulative Dividends.** The holder must report and remit total cumulative dividends to date, together with the stock certificate or the electronic equivalent of the stock certificate, when the certificate or equivalent is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is more than fifty dollars (\$50). (4-11-06)

**016. FILING A CLAIM WITH ADMINISTRATOR (RULE 016).**

**01. Interest.** Interest on interest bearing items will accrue from March 31, 1980, or date received, whichever is later, for a maximum of ten (10) years. No interest will be paid on items that are reported as interest bearing, unless the holder reports the rate of interest. (7-1-98)

**02. Payment of Claims - Claims Process.** (8-24-94)

**a.** Warrants will be authorized and payment made: (8-24-94)

i. In the name of, and mailed to, the established owner; or (8-24-94)

ii. To the court appointed estate administrator, administratrix, executor, executrix, or personal representative; or (8-24-94)

iii. To the court appointed guardian; or (8-24-94)

iv. In accordance with a court decree of distribution; or (8-24-94)

v. To an heir for distribution to other heirs; if any. (8-24-94)

**b.** Owner, Cashier's Checks: (8-24-94)

i. The owner of a cashier's check is presumed to be the payee unless the remitter has in his possession the cashiers check. (8-24-94)

ii. A payee is presumed to have received payment for a cashier's check or other instrument, and the payee must establish that the check was not cashed and that the owner is not, in fact, a holder in due course. (8-24-94)

**c.** It shall be the responsibility of the payee to disburse any funds or property in accordance with any existing contract or agreement. (8-24-94)

**d.** When one (1) claimant, who has proven that he has an interest in the unclaimed property, has been paid the full amount of unclaimed property held by the office of the State Treasurer, there is no requirement that the office of the State Treasurer pay other subsequent claimants. The office of the State Treasurer is not required to locate all heirs of owners of unclaimed property. (7-1-98)

**e.** If there are two (2) or more owners of unclaimed property, or the reported account is in the name of the tenants in common, or the holder report does not specify the percentage or share of co-owners, the office of the State Treasurer shall pay each owner an equal share of the account. (7-1-98)

~~**f.** Before payment of a claim for lost stock or bond certificates, a surety bond may be required of the owner/claimant which bond shall indemnify the office of the State Treasurer against claims by third parties. (7-1-98)~~

**gf.** Approved utility deposit claim forms and proof of payment to the claimant shall be retained by the utility company for a period of seven (7) years from the date the claim is paid.

(7-1-98)

**hg.** The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim. (4-11-06)