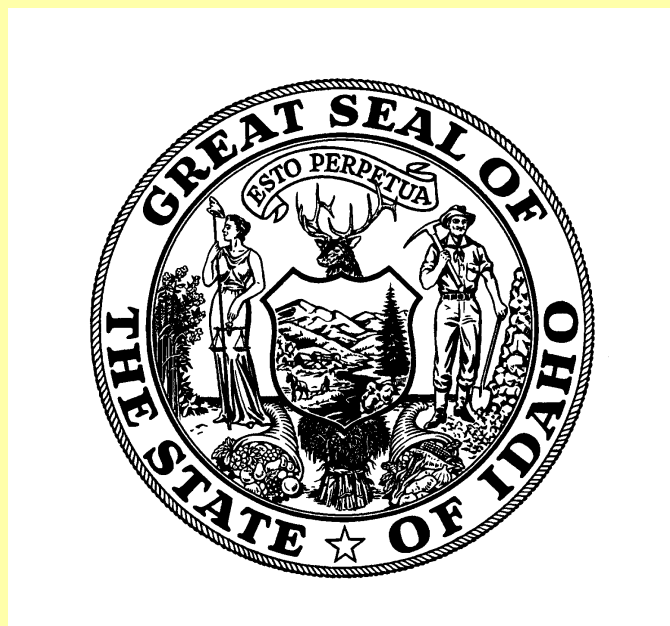


PENDING RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
House State Affairs Committee
63rd Idaho Legislature
First Regular Session



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2015

HOUSE STATE AFFAIRS COMMITTEE

ADMINISTRATIVE RULES REVIEW

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**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.02 - RULES GOVERNING SIMULCASTING

DOCKET NO. 11-0402-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of 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 54-2506, 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 proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 179 - 180](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

DATED this 7th Day of November, 2014.

Frank Lamb
Executive Director
Idaho Racing Commission
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7080
Fax: (208) 884-7098

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

EFFECTIVE DATE: The effective date of the temporary rule is July 23, 2014.

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 54-2506, 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 17, 2014.

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:

Before a license to conduct historic racing is granted to a licensee, this rule will require a licensee who applies for a license to have a current simulcast license and to have conducted simulcasting of live racing for at least one (1) year.

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

Providing this language will ensure that a licensee who desires to conduct historic racing in the state of Idaho has a commitment to the sport of live racing.

FEE SUMMARY: No fees are imposed by this rule.

FISCAL IMPACT: There is no negative impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule was discussed with input from the affected parties at the July 23, 2014 meeting of the Idaho Racing Commission and is simple in nature.

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:

No materials were incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

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 September 24, 2014.

DATED this 23rd Day of July, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-1401

049. HISTORICAL HORSE RACE LICENSING.

01. No Historical Horse Race Wagering Conducted Without a License. Wagering on an historical horse race shall only be conducted by a licensee approved by the Commission. (3-20-14)

02. Historical Horse Race Horse Breed. A licensee may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets, if any, conducted by the licensee. (3-20-14)

03. Approved Days and Hours. A licensee may conduct wagering on historical races on any days and hours that is in conformity with local municipalities and approved by the Commission. (3-20-14)

04. Cash or Cash Vouchers Only. Historical horse racing terminals shall use cash or cash vouchers only. (3-20-14)

05. License Must Hold Current Simulcast License. A licensee may not apply for a license to conduct historical racing unless that licensee holds a current simulcast license and has conducted simulcasting of live racing for a period of at least one (1) year. ()

**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.09 - RULES GOVERNING CLAIMING RACES

DOCKET NO. 11-0409-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of 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 54-2506 and 54-2512A, 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 proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 179 - 180](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

DATED this 7th Day of November, 2014.

Frank Lamb
Executive Director
Idaho Racing Commission
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7080
Fax: (208) 884-7098

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 54-2506 and 54-2512A, 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 15, 2014.

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 rule will clarify that it is not necessary for a horse that has been claimed to re-establish eligibility for a starter allowance race by running in a claiming race; and further prevents the use of “protective claims.”

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature and the rule was discussed with interested parties at the July 23, 2014 meeting of the Idaho Racing Commission.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0409-1401

~~036.~~ -- ~~039.~~ ~~(RESERVED)~~

~~040.~~ ~~STARTER ALLOWANCE RACE.~~

~~A horse which has been claimed must re-establish eligibility for a starter allowance race by running in a claiming race.~~ ~~(3-29-10)~~

~~041.~~ -- 049. (RESERVED)

050. PROHIBITIONS.

01. Financial or Beneficial Interest. A person may not claim a horse in which the person has a financial or beneficial interest as an owner or trainer. (3-29-10)

02. Undisclosed Financial or Beneficial Interest. A person may not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse. (3-29-10)

03. Agreement. A person may not enter into an agreement for the purpose of preventing another person from obtaining a horse in a claiming race. (3-29-10)

04. Ineligible or Undisclosed Person. A person may not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person. (3-29-10)

05. No more than One Horse. A person may not claim more than one (1) horse in a race. No authorized agent may submit more than one (1) claim for the same horse in a race, even if the authorized agent represents several owners. When a trainer's stable consists of more than one (1) owner, each owner may submit a claim in any one race, but no two (2) or more shall submit a claim for any one horse or all such claims shall be void. No person, corporation, partnership, stable name, or other legal entity will be eligible to claim another owner's horse from his own trainer's stable. ~~(3-29-10)~~()

**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.10 - RULES GOVERNING LIVE HORSE RACES

DOCKET NO. 11-0410-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of 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 54-2506 and 54-2512A, 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 proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 181 - 182](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

DATED this 7th Day of November, 2014.

Frank Lamb, Executive Director
Idaho Racing Commission
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7080
Fax: (208) 884-7098

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 54-2506 and 54-2512A, 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 15, 2014.

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 rule will allow thoroughbred horses that are owned by the same owner to be uncoupled for wagering purposes.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature and the rule was discussed with interested parties at the July 23, 2014 meeting of the Idaho Racing Commission.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0410-1401

113. COUPLED ENTRIES.

01. Coupled Entries. Two (2) or more horses that are entered in a race will be joined as a mutuel entry and single betting interest if they are owned or leased in whole or in part by the same racing interest or are trained by a trainer who owns or leases any interest in any of the other horses in the race, except: (3-29-10)

a. Multiple horses owned by the same racing interest may be uncoupled in stake races for the purpose of pari-mutuel wagering; or (3-29-10)

b. Multiple horses owned by the same racing interest may be uncoupled ~~in straightaway races~~ for the purpose of pari-mutuel wagering. (~~3-29-10~~)()

02. Overnight Race. No more than two (2) horses owned by the same racing interest may be entered in an overnight race. Under no circumstances may both horses of ~~a coupled~~ **such an** entry start to the exclusion of a single entry. When making **an coupled** entry, a preference for one (1) of the horses must be made. (~~3-29-10~~)()

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO STATE LIQUOR DIVISION**

15.10.01 - RULES OF THE IDAHO STATE LIQUOR DIVISION

DOCKET NO. 15-1001-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 acted on 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 23-206(b), 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 proposed rule was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 54 through 58](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jeffrey R. Anderson, Director, at (208) 947-9402.

DATED this 26th day of June, 2014.

Jeffrey R. Anderson, Director
Idaho State Liquor division
1349 Beechcraft Court
P. O. Box 179001
Boise, ID 83717-9001
Phone: (208) 947-9402
Fax: (208) 947-9401

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

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2014.

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 23-206(b), 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 June 18, 2014.

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:

Idaho distilleries have been increasing in number over the last decade. These manufacturers of distilled spirits desire to promote their product in the most responsible and best way possible, and this includes a desire to sell bottles of manufactured product purchased from the Division at retail to tourists visiting the distillery. Idaho law provides for exclusive sale of bottled “alcoholic liquor” (distilled spirits) within the state of Idaho by the Idaho State Liquor Division. Therefore, in order to allow for this practice, the Division contracts with interested distillery manufacturers, in essence, making them limited contract stores/distributing stations for purposes of retail sale of their product to on-premises tourists. With the passage of SB 1335 (section 23-509A, Idaho Code) allowing on-premises sample tasting, there is a potential conflict/ambiguity with section 23-313, Idaho Code, which prohibits consumption on the premises of contract stores/distributing stations.

This temporary and proposed rulemaking simply clarifies the ongoing authority for, and practice of, manufacturers of distilled spirits to provide limited retail sales of manufactured distilled spirits products to consumers in light of the new authority to offer sample tasting consumption on the premises of the distillery/distributing station.

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

The Idaho Legislature has passed SB 1335 (New Section 23-509A, Idaho Code), effective July 1, 2014, which allows manufacturers of distilled spirits to offer sample tastings in accordance with the statute. It has been determined that a temporary rulemaking is necessary, effective July 1, 2014, in order to clarify the ongoing authority for, and practice of, manufacturers of distilled spirits to provide limited retail sales of manufactured liquor products to Idaho consumers in light of the new authority to offer sample tasting consumption on premises.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Idaho Legislature has passed SB 1335 (New Section 23-509A, Idaho Code), effective July 1, 2014, which allows manufacturers of distilled spirits to offer sample tastings in accordance with the statute. It has been determined that a temporary rulemaking is necessary, effective July 1, 2014, in order to clarify the ongoing authority for, and practice of, manufacturers of distilled spirits to provide limited retail sales of manufactured liquor products to Idaho consumers in light of the new authority to offer sample tasting consumption on premises. With the rather expedited need for the rulemaking and the short time available, formal negotiated rulemaking is not feasible, but it is recognized that some informal communication and discussion will be advantageous to the Division and stakeholder manufacturers and such communication is anticipated.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jeffrey R. Anderson, Director, at (208) 947-9402.

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 June 25, 2014.

DATED this 9th day of May, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-1001-1401

004. DEFINITIONS.

The following terms, whenever used in these rules, shall have the meanings ascribed thereto, unless the context in which they are used clearly requires otherwise. (3-20-97)

01. Bailment. A system of storing Supplier-owned inventory in state-operated Warehouses. The Division holds the Liquor in trust until stock is needed at retail. (3-29-12)

02. Central Office. The main business office and Warehouse of the Idaho State Liquor Division. (3-20-97)

03. Close Relative. A person related by blood or marriage within the second degree of kinship. (3-20-97)

04. Contract Store. Distributing Stations, as defined in Subsection 004.08 of these rules, whose Liquor inventory is owned by the state under an Agreement. (3-29-12)

05. Delisting. The process of discontinuing any product offered for sale resulting in the product's removal from the Division's Product Line. The decision to retain or delist a product rests solely with the Director. (3-29-12)

06. Director. The chief executive officer of the Division. (3-29-12)

07. Division. The Idaho State Liquor Division. (3-20-97)

08. Distressed Liquor. Liquor which is not in its original state of packaging. (3-20-97)

09. Distributing Station. A privately owned business that sells Liquor. It operates under an Agreement with the Division pursuant to Title 23, Chapter 3, Idaho Code. Distributing Stations may also be termed Contract Stores. (3-29-12)

10. Distillery Distributing Station. A privately owned business that holds a permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB), a manufacturer's license pursuant to Section 23-507, Idaho Code, and sells Liquor to retail customers pursuant to a Special Distributor Agreement with the Division in accordance with Title 23, Chapter 3, Idaho Code. Distillery Distributing Stations are "manufacturers of distilled spirits" under Section 23-509A, Idaho Code. Distillery Distributing Stations may also be termed Contract Stores for purposes of retail sales of Liquor within the state of Idaho. ()

101. Liquor. Liquor controlled by the Division shall have the definition ascribed to it by Section 23-105, Idaho Code, excluding certain beers as defined in Section 23-1002, Idaho Code, and certain Wines as defined in Section 23-1303, Idaho Code. (3-20-97)

12. Licensee. Person authorized to sell beer or Wine by the drink or by the bottle, Liquor by the drink, or any combination thereof. (3-20-97)

- 123.** **Listing (Listed).** Liquor that is carried or approved to be carried in the Division's Product Line. (3-20-97)
- 134.** **Political Office.** A public office for which partisan politics is a basis for nomination, election, or appointment. (3-20-97)
- 145.** **Price Quotation.** Written verification of detailed product information submitted to the Division by Suppliers. (3-29-12)
- 156.** **Product Line.** Items offered for sale by the Division. (3-29-12)
- 167.** **Promotional Samples.** Liquor furnished by the liquor industry to local representatives for the purpose of promoting the product which must be attached to another Liquor product in the liquor store as a value added promotion. (3-29-12)
- 178.** **Retail Store.** Any State Store or Distributing Station. (3-20-97)
- 189.** **Samples.** Liquor furnished by the liquor industry to Supplier Representatives for the purpose of promoting the product. (3-29-12)
- 1920.** **Shortage.** Any amount of cash or Liquor less than the true balance as maintained by the Central Office. Liquor Shortages shall be based on current retail value. (3-20-97)
- 201.** **Special Distributor (Distributor).** A private business owner authorized to operate a Distributing Station. A Special Distributor is not a state employee. (3-20-97)
- 212.** **Special Distributor Agreement (Agreement).** The contract signed by a Special Distributor acknowledging the conditions and terms for operation of a Distributing Station in accordance with Idaho Code and the rules of the Division. (3-20-97)
- 223.** **Special Order.** Any item not regularly offered as part of the Division's Product Line. (3-29-12)
- 234.** **State Store.** A Retail Store that sells Liquor. It is operated by state employees under the direct supervision of the Division. (3-20-97)
- 245.** **Supplier.** Any manufacturer, rectifier, importer, wholesaler or Supplier of Liquor, Wine, or related products offered for sale by the Division. (3-29-12)
- 256.** **Supplier Representative.** An individual, company, or entity authorized to represent a Supplier in the state of Idaho. A Supplier Representative may be an individual, a group of individuals operating as a brokerage firm or may be a direct employee of the Supplier. A Liquor Supplier Representative must obtain an annual Supplier Representative permit from the Division. (3-29-12)
- 267.** **Warehouse.** The main Division distribution center and satellite distribution points operated by the Division. (3-29-12)
- 278.** **Wine.** Alcoholic beverages defined in Section 23-1303, Idaho Code. (3-29-12)
- 289.** **Wine Gallon.** The liquid measure equivalent to the volume of two hundred thirty-one (231) cubic inches or one hundred twenty-eight (128) ounces. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

012. DISTILLERY DISTRIBUTING STATIONS.

01. **Sample Tasting.** Distillery Distributing Stations may offer sample tastings on the premises of its distillery in accordance with Section 23-509A, Idaho Code. ()

02. **Retail Sales.** Distillery Distributing Stations may sell Liquor manufactured on premises of such distillery to customers outside the state of Idaho in accordance with Section 23-507, Idaho Code. Distillery Distributing Stations may sell Liquor manufactured on the premises that is purchased from the Division to customers on the premises of its distillery in accordance with and pursuant to a Special Distributor Agreement with the Division. The Special Distributor Agreement shall include governing terms and conditions for retail sale of Liquor manufactured on the premises within the state of Idaho in accordance with Title 23, Chapter 3, Idaho Code, and applicable rules of the Division governing retail sale operations. ()

01~~2~~3. **CONTRACT STORES.**

01. **Fiduciary Responsibility.** Any and all unremitted monies collected by the Contract Store are held in trust for the Division, and upon their receipt by the Contract Store, are assigned to the Division in accordance with Section 23-401, Idaho Code. (3-20-97)

02. **Liquor Shortage.** The Contract Store must pay the monetary value of any Shortage to the Division immediately after receipt of the request for payment from the Division showing its calculation of the Shortage. (3-20-97)

a. If the Contract Store disputes the existence, amount of, or responsibility for Liquor or cash Shortages, the Contract Store may request a hearing before the Director. (3-20-97)

b. Any payment made by the Contract Store for Liquor Shortages may be refunded in whole or in part if the Contract Store's position is upheld by the Director. (3-20-97)

03. **Compensation.** For Contract Store, compensation will be the gross profit allowance set by the Division. Compensation will vary based on sales volume. (3-20-97)

01~~3~~4. **SALES TO LICENSEES.**

To be eligible to purchase Liquor at discount (Section 23-217, Idaho Code) a Licensee shall obtain a no cost purchase order permit from any State Store or Distributing Station. (3-29-12)

01. **Permit Term.** The permit shall remain valid only as long as the permit holder is an authorized Licensee as defined in Section 23-902(e), Idaho Code. (3-29-12)

02. **Permits Are Not Transferable.** Permits are not transferable and will automatically terminate on suspension, revocation, sale, lease, or transfer of the liquor license. (3-29-12)

01~~4~~5. -- **019.** **(RESERVED)**

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.02.01 - PUBLIC RECORDS ACT RULES OF THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-0201-1401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Public Utilities Commission and is now pending review by the 2015 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 9-347 and 61-601, 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 proposed rule was published in the September 3rd, 2014 Idaho Administrative Bulletin, [Vol. 14-9, page 358](#).

FISCAL IMPACT: There is no fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

DATED this 6th day of October 2014.

Barbara Barrows
Assistant 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, ID 83702-5918

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated a proposed rulemaking procedure. This action is authorized pursuant to Sections 9-347 and 61-601, 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 17, 2014.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the Commission's address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Public Utilities Commission is proposing to repeal its Public Records Rules and replace them with “Public Records Guidelines” as authorized by Section 9-347, Idaho Code. The Commission’s Public Records Guidelines are substantially the same as its existing rules at IDAPA 31.02.01 and will be updated to reflect recent changes to the Idaho Public Records Law. The Guidelines will be posted on the Commission’s webpage.

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: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Commission is repealing its Public Records Rules and replacing them with Public Records Guidelines.

INCORPORATION BY REFERENCE: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed repeal, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

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 24, 2014.

DATED this 25th Day of July 2014.

LSO RULES ANALYSIS MEMO

IDAPA 31.02.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - RULES OF THE DIVISION OF PURCHASING

DOCKET NO. 38-0501-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of 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 67-5717(11) and 67-5732, 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:

In January 2013, the Office of Performance Evaluation issued Report 13-02, Strengthening Contract Management in Idaho. The pending rules are a result of the Division of Purchasing's consideration of the findings in Report 13-02 and provide enhanced processes for high risk contract development and administration. In addition, the Division has clarified and modernized the existing rules to reflect the processes currently used by the State.

The text of the rules has been modified after review of the comments submitted through the negotiated rulemaking process, including multiple meetings with affected agencies. The changes clarify the originally proposed language and modify the requirements for high dollar services contracts as requested by state agencies.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 449 through 470](#).

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:

The proposed rules have two predominant areas of fiscal impact:

1. Training Requirement - Proposed required training will require an expansion of the training program at the Division of Purchasing with a total budget impact estimated at less than \$245,800 annually. The current fee structure applied to executive contracts is sufficient to fund the expenditure increase.
2. High Dollar Contract Award and Management – Proposed rules requiring an oversight board, management by a professionally certified project manager and third party validation for service contracts in excess of \$5,000,000 will have a fiscal impact at the agency level. The fiscal impact to individual agencies will vary widely depending on the oversight procedures currently in place and the number of contracts that fall into the high value definition.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bill Burns at (208) 332-1610 or Sarah Hilderbrand at (208) 332-1612.

DATED this 7th Day of November, 2014.

Bill Burns, Administrator
Division of Purchasing
650 W. State St., Rm. B-15
P. O. Box 83720
Boise, ID 83720-0003
Tel: (208) 332-1610
Fax: (208) 327-7320

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 67-5717(11) and 67-5732, 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 15, 2014.

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 proposed rules revisions clarify the processes of state agency purchasing and new rules address processes for high dollar service contracts and for contract administration and management.

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:

The proposed rules have two predominant areas of fiscal impact:

1. Training Requirement - Proposed required training will require an expansion of the training program at the Division of Purchasing with a total budget impact estimated at less than \$245,800 annually. The current fee structure applied to executive contracts is sufficient to fund the expenditure increase.
2. High Dollar Contract Award and Management – Proposed rules requiring an oversight board, management by a professionally certified project manager and third party validation for service contracts in excess of \$5,000,000 will have a fiscal impact at the agency level. The fiscal impact to individual agencies will vary widely depending on the oversight procedures currently in place and the number of contracts that fall into the high value definition.

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 June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 97](#).

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance

on technical questions concerning the proposed rule, contact Bill Burns at (208) 332-1610 or Sarah Hilderbrand at (208) 332-1612.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0501-1401

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

The division of purchasing is located at 650 W. State Street, Lower Level, Room B-15, Boise, Idaho. The division's mailing address is P.O. Box 83720, Boise, Idaho 83720-0075. Office hours are 8 a.m. to 5 p.m., Monday through Friday, except state holidays. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

011. DEFINITIONS.

Unless defined otherwise in these rules, the definitions set forth in Section 67-5716, Idaho Code, shall apply to this chapter. ()

01. Acquisition. ~~The process of procuring or purchasing property by the state of Idaho.~~ (3-15-02)

~~02. Administrator.~~ The administrator ~~for~~ of the division of purchasing. ~~The administrator is the chief buyer.~~ (3-15-02)()

~~03. Agency.~~ ~~All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.~~ (3-15-02)

~~04. Alternate.~~ Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)

~~05. Bid.~~ ~~A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an invitation to bid.~~ (3-15-02)

~~06. Bidder.~~ ~~A vendor who has submitted a bid or quotation on specific property.~~ (3-15-02)

07. Brand Name or Equal Specification. This means a specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-15-02)

08. Brand Name Specification. This means a specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-15-02)

~~095.~~ **Buyer.** An employee of the division of purchasing designated as a buyer, contract administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing activity authority. (3-15-02)()

~~10.~~ **Component.** *An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities.* (3-15-02)

~~H06.~~ **Concession Services.** The granting by the purchasing activity authority of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-15-02)()

~~I207.~~ **Consultant Services.** This means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-15-02)

~~I308.~~ **Contract.** Contract means any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract shall also include any amendments mutually agreed upon purchase orders issued by both parties the state. (3-15-02)()

~~14.~~ **Contractor.** *A bidder or offeror who has been awarded an acquisition contract.* (3-15-02)

~~I509.~~ **Director.** The chief officer of the department of administration. (3-15-02)

~~160.~~ **Division.** The division of purchasing of the department of administration as established by Section 67-5714, Idaho Code. *Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency.* (3-15-02)()

~~171.~~ **Document.** When used in these rules, may include electronic documents. (3-15-02)

~~18.~~ **Equal.** *Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quotation.* (3-15-02)

~~19.~~ **Equipment.** *Items of personal property that have a normal useful life expectancy or measurable service life of two (2) or more years.* (3-15-02)

~~120.~~ **Formal Sealed Procedure.** Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)

~~21.~~ **Goods.** *Items of personal property including concession services, not qualifying as equipment, parts or supplies.* (3-15-02)

~~13.~~ **High Dollar Service Contract.** A contract with a total estimated cost during the initial term and renewals or extensions of five million dollars (\$5,000,000) or more. ()

~~14.~~ **Informal Solicitation.** Procedure by which the buyer solicits informal quotes by means of a request for quote. ()

~~22.~~ **Information Technology Property.** *Includes, but is not limited to, all present forms of computer hardware, computer software or services used or required for automated data processing, computer related office automation or telecommunications.* (3-15-02)

~~23~~**15.** **Invitation to Bid.** Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-15-02)

~~24.~~ **Lowest Responsible Bidder.** ~~The responsible bidder whose bid conforms in all material respects to the invitation to bid or request for proposals and reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.~~ (3-15-02)

~~25~~**16.** **Offeror.** A vendor who has submitted a ~~proposal in~~ response to a ~~request for quote, invitation to bid, or~~ request for proposals for property to be acquired by the state. (3-15-02)()

~~26~~**17.** **Open Contract.** A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to ~~procure or~~ purchase specified property under the terms and conditions set forth in the contract. (4-7-11)()

~~27.~~ **Person.** ~~Any business, individual, union, committee, club or other organization or group of individuals, not including a state or public agency.~~ (3-15-02)

~~28.~~ **Procurement.** ~~The process of obtaining property for state use by lease, rent or any manner other than by purchase or gift.~~ (3-15-02)

~~29~~**18.** **Professional Services.** Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, ~~engineering,~~ actuarial, ~~architecture,~~ veterinarian, ~~information technology,~~ and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. (3-15-02)()

~~30.~~ **Property.** ~~Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property. Includes concession services and rights to access or use state property or facilities for business purposes.~~ (3-15-02)

~~31~~**19.** **Proposal.** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-15-02)

~~32~~**0.** **Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)

~~33~~**21.** **Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)

~~34~~**22.** **Purchase Order.** ~~See also definition of Contract, typically used to acquire property. It is a~~ notification to the contractor to provide the stated property, ~~required material, equipment, supplies or services~~ under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of an ~~bidder's~~ offeror's quote, proposal, or bid. See also definition of contract (3-15-02)()

~~35~~**23.** **Purchasing Activity Authority.** The division or an agency ~~delegated that~~ exercising authority based on a delegation of authority by the administrator ~~for or as provided under these rules to an individual within~~ the division or the agency to engage in the conduct of purchasing. (3-15-02)()

~~36~~**24.** **Quotation Quote.** An offer to supply property in response to a request for quotation and generally used for ~~small or emergency purchases~~ informal solicitation procedures. (3-15-02)()

~~37~~**25.** **Request for Proposals.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. (3-15-02)(____)

~~38~~**26.** **Request for Quotation Quote.** The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase informal solicitation procedures.(3-15-02)(____)

~~39~~**27.** **Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing activity authority acquire the stated requirements property. (3-15-02)(____)

~~40~~**28.** **Sealed.** Includes invitations to bids and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids manually sealed and submitted. (3-15-02)(____)

~~41~~**29.** **Sealed Procedure Limit.** That dollar amount, as established by these rules, above which the formal sealed bid procedure will be used. Said The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-15-02)(____)

~~42.~~ **Services.** Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices. (3-15-02)

~~43~~**0.** **Small Purchase.** An acquisition that costs less than the sealed procedure limit. (3-15-02)

~~44~~**31.** **Solicitation.** Means an invitation to bid, a request for proposals, request for quote, or other document issued by the purchasing activity authority for the purpose of soliciting bids, proposals, quotes, or offers to perform a contract. (3-15-02)(____)

~~45~~**32.** **Specifications.** The explicit requirements furnished with an invitation to bid, request for proposals or request for quotations upon which a purchase order or contract is property to be based. Unless specifically provided in a solicitation, acquired by the state. ~~s~~Specifications do not include solicitation conditions or contractual terms including, without limitation, items such as vendor qualification requirements, bid closing times, delivery time or payment terms the scope of work and the performance and physical characteristics of property. (3-15-02)(____)

~~46~~**33.** **State.** This means the state of Idaho including each agency unless the context implies other states of the United States. (3-15-02)

~~47.~~ **Supplies.** Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk. (3-15-02)

~~48~~**34.** **Telecommunications.** Means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-15-02)

~~49.~~ **Vendor.** A person or entity capable of supplying property to the state. (3-15-02)

~~50~~**35.** **Written.** When used in these rules, may include an electronic writing. (3-15-02)

012. -- 020. (RESERVED)

021. DELEGATION CONDUCT OF AUTHORITY OF ADMINISTRATOR PURCHASING.
The conduct of purchasing encompasses all phases of the process of purchasing property for the state of Idaho under the provisions of Title 67, Chapter 57, Idaho Code, including pre-solicitation planning, solicitation, award, and contract administration. (____)

01. Authority of the Administrator. The administrator is the chief buyer of the division. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent

for such agency. The division shall administer the conduct of purchasing and the acquisition of all property for agencies except those for which ~~the agencies have~~ an agency has separate statutory purchasing authority. ()

02. Delegation of Authority of the Administrator. The administrator may delegate in writing such authority as deemed appropriate to any employees of the division or of a purchasing activity authority. Such delegations shall remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. All delegated acquisitions under delegated authority must be made according to these purchasing rules, the policies developed by the division, and the conditions established by the administrator in the delegation. Delegations shall be subject to periodic reporting as directed by the administrator. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

032. ACQUISITION OF CONCESSION SERVICES.

If there is no expenditure of state funds, the acquisition of concession services, including but not limited to, exclusive-rights contracts, franchises, vending services, options, pouring contracts, services contracts, advertising contracts, broadcast rights to sporting events or other similar types of goods property, may be conducted by each purchasing activity authority as it determines to be in its best interest; provided, however, concessions within the definition of a food service facility set forth in Section 67-6902, Idaho Code, shall comply with the provisions of Title 67, Chapter 69, Idaho Code. ~~While there is no statutory requirement for competitive bidding for concession services or the applicability of purchasing statutes to the award of contracts for concession services when no expenditure of state funds is involved,~~ The purchasing activity authority is encouraged to utilize a competitive process if determined to be in its best interest. (3-15-02)()

033. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY.

Unless otherwise exempted by statute or these rules, all agency requests exceeding the sealed procedure limit for telecommunications or information technology property must be reviewed and approved by the office of the chief information officer within the department of administration before submission to the division. It is the requesting agency's responsibility to attach any approvals to any requisitions submitted to the division. Acquisitions of these types of property are subject to ~~state acquisition requirements, so~~ these rules and agencies should plan long enough in advance to allow for ~~this~~ review by the office of the chief information officer. ~~The department's review and any subsequent~~ All acquisitions of telecommunications and information technology property will conform to the guidelines and policies established or adopted by the ~~Information Technology Resource Management Council or other~~ governing or policy board or council ~~that may be~~ created by statute or directive for the purpose of information technology oversight or review. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

035. -- ~~040~~**39. (RESERVED)**

040. PROCEDURE FOLLOWED IN ~~THE~~ SOLICITATIONS ~~OF BIDS AND PROPOSALS.~~

01. Procurements Subject to Formal Sealed Procedure - Sealed Procedure Limit. Except as otherwise provided in these rules, the acquisition of property exceeding at a cost of one hundred thousand dollars (\$100,000) or more (the sealed procedure limit) shall be by ~~the~~ a formal sealed procedure. For the purpose of the sealed procedure limit, costs are determined based on either the total costs of a one-time purchase of property or the total cost of a term contract for property, including all available renewal or extension periods. ()

02. Agency Procurement Contact. Agencies shall assign an individual contact for each solicitation where a requisition amount exceeds the sealed procedure limit, whether the solicitation is conducted by the division or administered by the agency. The procurement contact shall be the individual selected by the agency to monitor the procurement's compliance with these rules, coordinate the development of a solicitation and to serve as the agency's primary contact with the division concerning this procurement. Prior to the solicitation release, all procurement

contacts shall complete a training program tailored to meet the specific needs of the agency and approved by the administrator. ()

03. Vendor Qualification. All vendors submitting responses to solicitations issued by the state must be qualified. All vendors are qualified unless disqualified as defined by Section 67-5730, Idaho Code. ~~(4-7-11)~~()

04. Use of E-procurement System. Unless exempted by the administrator or these rules, all solicitations shall be issued through the division's e-procurement system. ()

05. Vendor Communication. Vendors shall not communicate with the purchasing authority or the requisitioning agency concerning any solicitation during the period from solicitation issuance through contract award unless the communication is allowed by these rules or the terms of the solicitation. Vendors engaging in communication prohibited by this rule and submitting a response to the solicitation will be non-responsive. ()

041. SPECIAL PROCEDURES FOR HIGH DOLLAR SERVICE CONTRACTS.

Unless exempted in writing by the administrator or by this rule, the following additional procedures apply to high dollar service contracts. Contracts meeting the dollar threshold with a scope including mixed services and goods shall be a high dollar service contract when the scope is primarily for services. The determination of whether the scope is primarily for services shall be made by the administrator in his sole discretion. ()

01. Exemptions. ()

a. High dollar service contracts within the delegated authority purchase limit of an agency are exempt from compliance with the provisions of third party validation under Paragraph 041.02.a. of this section and use of an oversight board under Paragraph 041.02.b. of this section. Notwithstanding this exemption and an agency's delegated purchasing authority, the administrator shall determine whether a contract meeting the dollar threshold is primarily for services and subject to the provisions of this section. ()

b. The administrator will establish a policy identifying guidelines for the award of exemptions and consult with affected agencies in the development and modification of such policy. Exemptions for contracts may require the implementation of one (1) or more of the requirements of this section or Section 125 of these rules. The policy will allow for revocation of policy exemptions and provide a process for reconsideration of any revocation and escalation to the director. The decision of the director concerning the revocation of an exemption shall be final and shall not be subject to appeal pursuant to Section 67-5733, Idaho Code, or a contested case as that term is defined under the provisions of Title 67, Chapter 52, Idaho Code. ()

02. Special Procedures. ()

a. Third Party Validation. The agency requisitioning property that will result in a high dollar service contract shall engage an independent third party subject matter expert to validate that the project planning process is conducted in accordance with best practices. The engagement of a third party subject matter expert shall comply with these rules. ()

b. Oversight Board. The agency requisitioning property that will result in a high dollar service contract shall establish an oversight board for the solicitation process. The oversight board's duties shall include review of the third party validation received pursuant to Subsection 041.01 of this section. The oversight board shall issue a report to the administrator concerning the conclusions of the third party validation and recommendations concerning modifications to the solicitation. The oversight board shall include no less than two (2) experts in the subject matter of the contract without a potential conflict of interest. For the purposes of this subsection, experts in the subject matter of the contract with a potential conflict of interest include individuals: ()

i. With a direct reporting relationship to any other individual providing supervision or management of the contract resulting from the solicitation, other than the senior official of the agency; or ()

ii. Who are interested in or likely to become interested in the contract resulting from the solicitation.

An interest in the contract includes the award of a contract to the individual, to a company controlled by or employing the individual, or to a company controlled by or employing the spouse, parent, spouse's parent or a child of the individual. ()

c. Reporting. Solicitations that will result in a high dollar service contract shall provide for contractor reporting. The schedule and content of contractor reporting shall be reviewed in the third party validation process and by the oversight board established under these rules. ()

d. Negotiations. Solicitations that will result in a high dollar service contract shall provide for proposal discussions with individual offerors pursuant to Section 083 of these rules and negotiations pursuant to Section 084 of these rules. ()

e. Approval of Solicitation Release. Solicitations that will result in a high dollar service contract shall be approved for release by a procurement professional who: ()

i. Possesses, at a minimum, certification as a certified professional public buyer (CPPB) by the Universal Public Procurement Certification Council (UPPCC) or an equivalent certification by a public procurement purchasing certification institution approved by the administrator; and ()

ii. Has completed a training program approved by the administrator. ()

f. Administration Agreement. Prior to the award of a high dollar service contract, the requisitioning agency and the division shall enter into an agreement setting forth the roles and responsibilities of each party, the reports to be provided by each party, and the schedule for such reports. This section applies to all high dollar service contracts regardless of the purchasing authority managing the procurement. ()

042. EXCEPTIONS TO FORMAL SEALED PROCEDURE.

Purchases meeting the following criteria need not be purchased by the formal sealed procedure: (3-15-02)

01. Emergency Purchases. Emergency purchases as authorized by Section 67-5720, Idaho Code, and Section 043 of these rules. ~~(3-15-02)~~()

02. Small Purchases. Small purchases, unless the administrator specifically requires a formal sealed procedure, made in accordance with Section 044 of these rules. ~~(3-15-02)~~()

03. Sole Source Purchases. Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-5720, Idaho Code, and Section 045 of these rules. ~~(3-15-02)~~()

04. Reverse Auctions. Purchases through reverse public auctions as authorized by Section 67-5720, Idaho Code. (3-15-02)

05. Federal Government Acquisitions. Acquisitions from the United States of America or any agency thereof. (3-15-02)

06. Rehabilitation Agency Acquisitions. Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

07. Correctional Industries. Purchases of ~~road or street signs, metal motor license plates, wearing apparel, furniture, articles or containers for state use not for resale on the open market or any other~~ property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. ~~(3-15-02)~~()

08. Purchases from General Services Administration Federal Supply Contractors. Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid upon written approval of the administrator. The administrator shall determine whether such property meets the ~~purchasing activity's~~ requisitioning agency's requirements and whether the price of acquisition is

advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive bidding procedures and requirements. (3-15-02)()

09. Existing Open Contracts. ~~Supplies, services or other~~ Except as provided in these rules, property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. (4-7-11)()

10. Exempt Purchases. By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive acquisition that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-15-02)

a. Examples include, but are not limited to: (3-15-02)

i. Special market conditions; (3-15-02)

ii. Property requiring special contracting procedures due to uniqueness; (3-15-02)

iii. Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; ~~or~~ (3-15-02)()

iv. ~~Services~~ Property for which competitive solicitation procedures are impractical; ~~or~~ (3-15-02)()

v. Used property. ()

b. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

11. Interagency Agreements and Agreements for the Joint Exercise of Powers. Acquisitions of property under an interagency agreement pursuant to Section 67-2332, Idaho Code, or an agreement for the joint exercise of powers pursuant to Section 67-2328, Idaho Code. ()

043. EMERGENCY PURCHASES.

01. Definition of Emergency Conditions. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or other similar circumstances. The existence of such condition must create an immediate and serious need for property that cannot be met through normal acquisition methods. The buyer or the agency official responsible for purchasing shall make a written determination stating the basis for an emergency purchase and for the selection, if applicable, of the particular supplier. Such determination shall be sent promptly to the administrator for review and written approval that the purchase be undertaken as an emergency purchase. (3-15-02)

02. Conditions. Emergency purchases shall be limited to only that property necessary to meet the emergency. The director or administrator may delegate authority in writing to an agency or purchasing ~~activity~~ authority to make emergency purchases of up to an amount set forth in the delegation of authority. (3-15-02)()

044. SMALL PURCHASES.

~~**01. General.** *Small purchases are those purchases or procurements expected to cost one hundred thousand dollars (\$100,000) or less. Costs are determined based on the following:* (4-7-11)~~

~~**a.** *One-time purchases of property; or* (3-15-02)~~

~~**b.** *Total cost of a contract for services, including renewal or extension periods.* (3-15-02)~~

~~02. **Splitting of Requirements.** Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. (3-15-02)~~

~~03. **Procedure.** Unless impractical or impossible and documented in the file, these small purchase procedures require the acquisition to be publicly posted. Except as otherwise provided in this rule, no less than three (3) vendors having a significant Idaho presence as defined by Section 67-2349, Idaho Code, shall be solicited to submit quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible. (3-15-02)~~

~~04. **Form of Request for Quotation.** Unless otherwise prohibited by the buyer, the request for quotation and the quotation may be written, oral, electronic, telephonic or facsimile. (3-15-02)~~

~~05. **Quoting Time.** The quoting time shall be determined by the buyer and should provide sufficient time for the vendor to prepare and return a quotation. The amount of time shall take into consideration such factors as complexity, urgency, availability of property and the number and location of vendors. (3-15-02)~~

~~06. **Open Contracts.** Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. (4-7-11)~~

~~07. **Professional, Consultant, and Information Technology Services.** Professional, consultant, and information technology services acquired under this rule, where the services are reasonably expected to cost one hundred thousand dollars (\$100,000) or less through a fixed price/not to exceed price contract for a non-renewable term not to exceed one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the service is not available under an open contract. (4-7-11)~~

~~08. **Purchases in Amounts Less Than Ten Thousand Dollars.** If the property to be acquired is expected to cost less than ten thousand dollars (\$10,000), it may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the property is not available under an open contract. (4-7-11)~~

01. Small Purchase Categories. ()

a. Exempt. Property expected to cost less than ten thousand dollars (\$10,000). ()

b. Informal. Purchase of any property expected to cost at least ten thousand dollars (\$10,000) and less than the sealed procedure limit. ()

c. Professional and Consultant Services. The acquisition of professional or consultant services expected to cost less than the sealed purchase limit, for projects limited to one (1) year in duration. ()

02. Procedure. Agencies acquiring property under this rule are encouraged to work with legal counsel to develop solicitation and contract terms that serve the best interests of the state. The terms of procurements under this rule are subject to the provisions of Section 112 of these rules. ()

a. Professional and consultant small purchases and exempt small purchases may be acquired as each agency sees fit, in accordance with good business practice and agency-established policy, in the best interest of the state; subject to the limitations in Subsection 044.03 of this rule. ()

b. Informal small purchases shall be made using informal solicitation procedures, subject to the limitations in Subsection 044.03 of this rule. Unless exempted by the administrator, informal solicitations shall be issued through the division's e-procurement system. The purchasing authority will establish the quoting time based on factors such as complexity, urgency, and the number and location of vendors, in an effort to allow vendors sufficient time to prepare and return a quote. Agencies procuring property under this rule shall maintain a purchasing file containing the following: ()

i. The solicitation document posted and quotes received. If the acquisition was not publicly posted, the agency shall include a statement in the purchasing file describing the basis for determining posting was impractical or impossible. ()

ii. If not posted on the division's e-procurement system, the agency shall document the quotes received from at least three (3) vendors having a significant Idaho economic presence as defined by Section 67-2349, Idaho Code. If there are fewer than three (3) vendors of the property having a significant Idaho economic presence, the agency shall document its attempt to obtain quotes from vendors with a significant Idaho economic presence. ()

03. Limitations. The following limitations apply to all small purchases: ()

a. Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. ()

b. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. ()

c. Small purchases not issued for a fixed price shall include a not to exceed price of no more than the applicable sealed procedure limit. ()

045. SOLE SOURCE PURCHASES.

01. **Only a Single Supplier.** Sole source purchase shall be used only if ~~a requirement~~ required property is reasonably available from a single supplier. A requirement for a particular proprietary property item does not justify a sole source purchase if there is more than one (1) potential ~~bidder or~~ offeror ~~for~~ that can provide the required property ~~item~~. (3-15-02)()

02. **Examples of Sole Source.** Examples of circumstances that could necessitate a sole source purchase are: (3-15-02)

a. Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration. (3-15-02)

b. Where a ~~sole~~ single supplier's item is needed for trial use or testing. (3-15-02)()

c. Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher. (3-15-02)

d. Purchase of property for which it is determined there is no functional equivalent. (3-15-02)

03. **Administrator Makes Determination.** The determination as to whether an acquisition shall be made as a sole source ~~shall~~ will be made by the administrator. Each request shall be submitted in writing by the ~~using~~ requesting agency. The administrator may specify the application of such determination and its duration, and may apply additional conditions to an approval. In cases of reasonable doubt, competition should be solicited. Any request by an ~~using~~ agency that an acquisition be restricted to ~~one (1) potential contractor~~ a single supplier shall include a justification for the property, as well as an explanation as to why no other ~~contractor~~ vendor is acceptable. (3-15-02)()

04. **Negotiation in Sole Source Purchase.** ~~The buyer~~ After receipt of authorization from the administrator for a sole source purchase, the agency shall conduct negotiations, as appropriate, as to price, delivery and terms in accordance with the authorization and in the best interests of the state. (3-15-02)()

046. DETERMINATION OF FAIR MARKET PRICE FOR REHABILITATION AGENCY ACQUISITIONS.

Upon receipt of a rehabilitation agency proposal accompanied by detailed cost data, the administrator will conduct a

survey of the market ~~place by requesting current prices from at least three (3) vendors currently marketing appropriate for~~ the property being sought. The fair market price of a rehabilitation ~~vendor~~ agency shall not be greater than one hundred twenty-five percent (125%) of the lowest price received during the survey. The administrator will notify by letter the rehabilitation agency concerned advising it as to whether it is offering property at fair market price. ~~The division or purchasing activity, if the acquisition is less than the sealed procedure limit or the contract is one (1) year or less in duration, may then contract with the rehabilitation agency at the proposed price.~~

~~(3-15-02)()~~

047. -- 050. (RESERVED)

051. CONTENT OF ~~THE INVITATION TO BID OR REQUEST FOR PROPOSALS~~ SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

The following shall be included in an invitation to bid or a request for proposals: (3-15-02)

01. Submission Information. Information regarding the applicable opening date, time and location. (3-15-02)

02. Specifications. Specifications developed in accordance with Section 111 of these rules ~~including, if applicable, scope of work.~~ (3-15-02)()

03. Contract Terms. Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-15-02)()

04. Evaluation Criteria. Any evaluation criteria to be used in determining property acceptability. (3-15-02)

05. Trade-In Property. If trade-in property is to be included, a description of the property and location where it may be inspected. (3-15-02)

06. Incorporation by Reference. A brief description of any documents incorporated by reference that specifies where such documents can be obtained. (3-15-02)

07. Pre-Proposal Conference. The date, time, and location of the pre-proposal conference must be included in the request for proposals. (4-7-11)

052. CHANGES TO ~~INVITATION TO BID OR REQUEST FOR PROPOSALS~~ SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

~~An invitation to bid or request for proposals~~ solicitation issued under a formal sealed procedure may be changed by the buyer through issuance of an addendum amendment, provided the change is issued in writing prior to the bid opening solicitation closing date and is made available to all vendors receiving the original solicitation. Any material information given or provided to a prospective vendor with regard to ~~an invitation to bid or request for proposals~~ solicitation shall be made available in writing by the buyer to all vendors receiving the original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the division state unless confirmed in writing by the buyer and acknowledged by the division purchasing authority prior to the date of the opening closing. Changes to the ~~invitation to bid or request for proposals~~ solicitation shall be identified as such and shall require that the vendor acknowledge receipt of all addenda issued. The right is reserved to waive any informality. (3-15-02)()

~~**053. PRICE ESCALATION.**~~

~~Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order.~~ (3-15-02)

054~~3~~. -- 060. (RESERVED)

061. FORM OF SUBMISSION FOR SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

01. Manual Submissions. Unless otherwise provided in these rules, to receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted manually must be made on the form provided, which form must be properly completed and signed in ink or contain an electronic signature as defined in Section 28-50-102, Idaho Code. ~~Photocopy or facsimile signatures will be rejected.~~ All changes or erasures on manual submissions shall be initialed in ink. Unsigned or improperly submitted bids or proposals will be rejected. ~~Telegraphed, telephonic or facsimile submissions will not be accepted except for emergency and small purchases.~~ The purchasing ~~activity does not~~ authority assumes no responsibility for failure of ~~any~~ the United States Postal Service, any private or public delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. (3-15-02)()

02. Electronic Submissions. To receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of these rules and contain an electronic signature as defined in Section 28-50-102, Idaho Code. The purchasing ~~activity does not~~ authority assumes ~~any~~ no responsibility for failure of any electronic submission process, including any computer or other electronic equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. (3-15-02)()

062. -- 069. (RESERVED)

070. PRE-PROPOSAL CONFERENCE.

All request for proposals' ~~solicitations~~ will have a pre-proposal conference for vendors and will be conducted by the procurement team and project personnel. The conference will consist of a general overview of the procurement process as well as the scope of work and requirements of the subject request for proposal. The procurement team will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the state's e-procurement system as an amendment to the request for proposal, will have any force or effect. (4-7-11)()

071. PRE-OPENING WITHDRAWAL OR MODIFICATION.

Manual submissions may be withdrawn or modified only as follows: Bids or proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting vendor. Bids or proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting vendor. Bids or proposals may be withdrawn or modified by telegraphic electronic communication provided the telegraph communication is received prior to the closing. The withdrawal or modification, if done via telegraph electronic communication, must be confirmed in a writing signed in ink or containing an electronic signature as defined in Section 28-50-102, Idaho Code. ~~The written confirmation must be mailed and postmarked no later than the closing date. If the written confirmation of the withdrawal or modification is not received within two (2) working days from the closing date, no consideration will be given to the telegraphic modification.~~ Any withdrawing or modifying communication, including a telegram an electronic communication, must clearly identify the solicitation. A modifying letter or telegram communication should be worded so as not to reveal the amount of the original bid or proposal. ~~No other form of withdrawal or modification (e.g., telephone or facsimile) will be accepted.~~ (3-15-02)()

072. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS.

Any bid or proposal, withdrawal, or modification received after the time and date set for opening closing at the place designated for opening in the solicitation is late. No late bid or proposal, late modification or late withdrawal will be considered. All late bids and proposals, other than clearly marked "no bids", will be returned to the bidder offeror. Time of receipt will be determined by the official time stamp or receipt mechanism located at the purchasing activity designated place for receipt of responses. The purchasing ~~activity does not~~ authority assumes ~~any~~ no responsibility for failure of the United Postal Service, any private or public delivery services, or ~~means or for the failure of~~ any computer or other electronic equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. (3-15-02)()

073. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS.

Upon receipt, all bids, proposals and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until bid the time specified for opening time. Time stamping and storage may be through electronic means. Bids shall be opened publicly at the date and time specified in the invitation

to bid. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the request for proposals. Bid and proposal openings may be electronic virtual openings. (3-15-02)()

074. MISTAKES.

The following procedures are established relative to claims of a mistake. (3-15-02)

01. Mistakes in ~~Bids~~ Responses. If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the ~~division~~ state or the fair treatment of other submitting vendors. (3-15-02)()

02. Mistakes Discovered Before Opening. Mistakes ~~detected~~ discovered by a vendor prior to opening closing may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the purchasing ~~activity~~ authority before the opening closing. Vendors who discover a mistake after closing but prior to opening may withdraw the submission by written notification to the purchasing authority and signed by an individual authorized to bind the vendor if such notification is received by the purchasing authority prior to opening. (3-15-02)()

03. Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award. (3-15-02)

a. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to: (3-15-02)

i. Return the required number of signed submissions. (3-15-02)

ii. Acknowledge the receipt of an ~~addendum~~ amendment, but only if: (3-15-02)()

(1) It is clear from the submission that the submitting vendor received the ~~addendum~~ amendment and intended to be bound by its terms; or (3-15-02)()

(2) The ~~addendum~~ amendment involved had a negligible effect on price, quantity, quality or delivery. (3-15-02)()

b. Mistakes Where Intended Submission is Evident. If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors. (3-15-02)

c. Mistakes Where Intended Submission is not Evident. A vendor may be permitted to withdraw a low bid if: (3-15-02)

i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or (3-15-02)

ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. (3-15-02)

04. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract. (3-15-02)

05. Written Approval or Denial Required. In the event of a mistake discovered after the opening

date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission. (3-15-02)

075. -- 080. (RESERVED)

081. EVALUATION AND AWARD.

Any contract award shall comply with these provisions. (3-15-02)

01. General. The contract is to be awarded to the lowest responsible and responsive ~~bidder or~~ offeror. The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsible and responsible determination. ~~No submission shall be evaluated for any requirements or criteria that are not disclosed in the solicitation.~~ (3-15-02)()

02. Standards of Responsibility. Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase, ~~provided that these additional standards are set forth in the solicitation.~~ Factors to be considered in determining whether a vendor is responsible include whether the vendor has: (3-15-02)()

a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements; (3-15-02)

b. A satisfactory record of integrity; (3-15-02)

c. Qualified legally to contract with the purchasing ~~activity~~ authority and qualified to do business in the state of Idaho; (3-15-02)()

d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility; (3-15-02)

e. ~~Requisite E~~experience; or (3-15-02)()

f. A ~~satisfactory~~ prior performance record, if ~~any~~ applicable. (3-15-02)()

03. Information Pertaining to Responsibility. A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable. (3-15-02)

04. Written Determination of Nonresponsibility Required. If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer. (3-15-02)

05. Extension of Time for Acceptance. After opening, the buyer may request submitting vendors to extend the time during which their bids or proposals may be accepted, ~~provided that, with regard to bids, no other change is permitted.~~ The reasons for requesting such extension shall be documented. (3-15-02)()

06. Partial Award. A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a ~~bid response to a solicitation~~, excluding others ~~portions of a response and other offerors~~, unless the ~~bidder offeror~~ stipulates all or nothing in its ~~bid response to a solicitation~~. (3-15-02)()

07. Only One Submission Received. If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be rejected and: (3-15-02)

a. New bids or offers may be solicited; or (3-15-02)

- b. The proposed acquisition may be canceled. (3-15-02)

082. TIE BIDS RESPONSES.

The following provisions shall apply to tie bids as defined herein. (3-15-02)

01. Tie Bids Responses -- Definition. Tie bids responses are low responsive bids, quotes, or proposals from responsible bidders offerors that are identical in price or score. A responsible offeror is determined based upon the standards of responsibility set forth in Section 081 of these rules. The ranking of offers on price or score shall be weighed as set forth in the solicitation. (3-15-02)()

02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders offerors. In the discretion of the buyer, award shall be made in any permissible manner that will discourage resolve tie bids responses. Procedures that may be used to discourage tie bids responses include: (3-15-02)()

a. If price is considered excessive or for another reason, such bids responses are unsatisfactory, reject all bids responses, rebid and seek a more favorable contract in the open market or enter into negotiations pursuant to Paragraph 084.01.d. of these rules; (3-15-02)()

b. Award to an Idaho resident or an Idaho domiciled bidder offeror or for an Idaho produced product property where other tie bid response(s) are from out of state or to a bidder an offeror submitting a domestic product property where other tie bid is response(s) are for foreign (external to Idaho) manufactured or supplied property; (3-15-02)()

c. Where identical low bids responses include the cost of delivery, award the contract to the bidder offeror farthest from the point of delivery; (3-15-02)()

d. Award the contract to the bidder offeror who received the previous award and continue to award succeeding contracts to the same bidder offeror so long as all low bids responses are identical; (3-15-02)()

e. Award to the bidder offeror with the earliest delivery date. (3-15-02)()

03. Drawing Lots. If no permissible method will be effective in discouraging resolving tie bids responses and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie bids responses. (3-15-02)()

083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.

01. Classifying Proposals. For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as: (3-15-02)

a. Acceptable; (3-15-02)

b. Potentially acceptable, that is reasonably susceptible of being made acceptable; or (3-15-02)

c. Unacceptable. (3-15-02)

02. "Offerors" Defined. For the purposes of this rule, the term "offerors" includes only those persons vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include persons vendors that submitted unacceptable proposals. (3-15-02)()

03. Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed. (3-15-02)

04. Conduct of Discussions. The solicitation document must provide for the possibility of discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions

there is a need for clarification or change of the request for proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror. (3-15-02)

05. Best and Final Offer. The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency state's interest, and additional discussions will be conducted or the agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. (3-15-02)()

084. NEGOTIATIONS.

In accordance with Section 67-5717(12), Idaho Code, the administrator may negotiate acquisitions as follows: (3-15-02)

~~01. Price Agreements. The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed appropriate. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be appropriate when: (3-15-02)~~

~~a. The dollar value of items or transactions is relatively small; (3-15-02)~~

~~b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck or other equipment parts having individual low unit costs; (3-15-02)~~

~~c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or (3-15-02)~~

~~d. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. (3-15-02)~~

021. ~~After a Competitive Solicitation~~ Use of Negotiations. Negotiations may be used under this rule when the administrator determines in writing that negotiations may be in the best interest of the state and that including, but not limited to, the following circumstances: (3-15-02)()

a. A competitive solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (3-15-02)

b. There has been inadequate competition; ~~or~~ (3-15-02)()

c. During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state; ~~or~~ (3-15-02)()

d. During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the solicitation to reduce the cost to available funds and avoid the expenditure of resources for a resolicitation. ()

032. Examples. Examples of situations in which negotiations, ~~as permitted by Subsection 084.02.c. of this rule,~~ may be appropriate include but are not limited to: (3-15-02)()

a. Ensuring that the offering vendor has a clear understanding of the scope of work required and the requirements that must be met; (3-15-02)

b. Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or (3-15-02)

c. Agreeing to any clarifications regarding scope of work specifications or other contract terms. (3-15-02)()

043. Conditions of Use. Negotiations, as permitted by Subsection Paragraph 084.021.c. of this rule, are subject to the following: (3-15-02)()

a. The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted; (3-15-02)

b. Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (3-15-02)

c. Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations; (3-15-02)

d. Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder; (3-15-02)

e. If one (1) or more responsive offers does not exceed available funds, ~~Any~~ negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria; or the specifications ~~or scope of work~~; (3-15-02)()

f. Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (3-15-02)

g. Any clarifications or changes resulting from negotiations shall be documented in writing; (3-15-02)

h. If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and (3-15-02)

i. If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be cancelled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

054. Timing of Use. If conducted, negotiations are the last step in the procurement process. Use of oral interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule. (3-15-02)

085. PRICE AGREEMENTS.

The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed in the best interest of the state. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be in the best interest of the state when: ()

01. Dollar Value. The dollar value of individual procurements of property is less than the maximum dollar value of an exempt small purchase under Section 044 of these rules and multiple individual procurements are anticipated within a state of Idaho fiscal year; ()

02. Property. The property may not be conducive to standard competitive bidding procedures; ()

03. Multiple Agreements. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or ()

04. Non-exclusive Agreements. Non-exclusive agreements for periods not exceeding two (2) years are

~~deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms.~~ ()

0856. -- 090. (RESERVED)

091. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS.

Prior to the issuance of a ~~purchase order or~~ contract, the administrator shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when: (3-15-02)()

01. **Best Interest.** It is in the best interests of the state of Idaho; (3-15-02)
02. **Does Not Meet Specifications.** The submission does not meet the minimum specifications; (3-15-02)
03. **Not Lowest Responsible Bid.** The submission is not the lowest responsible submission; (3-15-02)
04. **Bidder Is Not Responsible.** A finding is made based upon available evidence that a submitting vendor is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (3-15-02)
05. **Deviations.** The item offered deviates to a major degree from the specifications, as determined by the administrator (minor deviations, as determined by the administrator, may be accepted as substantially meeting the requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive process or provides a submitting vendor an unfair advantage. (3-15-02)

092. CANCELLATION OF SOLICITATION.

Prior to the issuance of a ~~purchase order or~~ contract, the purchasing ~~activity~~ authority reserves the right to reject all bids, proposals, or ~~quotations~~ quotes, or to cancel a solicitation ~~or request for quotation~~. In the event of the cancellation of an invitation to bid or request for proposals, all submitting vendors will be notified. Examples of reasons for cancellation are: (3-15-02)()

01. **Inadequate or Ambiguous Specifications.** (3-15-02)
02. **Specifications Have Been Revised.** (3-15-02)
03. **Cancellation Is in the Best Interest of the State.** (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

~~102. TIME PURCHASE CONTRACTS.~~

~~01. **Time Purchase for Personal Property.** A time purchase or installment contract, that may include interest charges over a period of time, may be entered into provided:~~ (3-15-02)

~~a. Such contract is in the best interest of the agency. Installment payments should be used judiciously in order to achieve economy and not to avoid budgetary restraints.~~ (3-15-02)

~~b. Using agencies shall be responsible for ensuring that all statutory or other applicable requirements are met and that all budgetary or other required approvals are obtained.~~ (3-15-02)

~~c. Documentation of any required approval shall be submitted to the division with any required requisition.~~ (3-15-02)

~~d. Provision for installment payments must be included in the solicitation.~~ (3-15-02)

~~02. **Lack of Fund Contract Language Required.** An installment or time purchase contract shall include appropriate language stating that the agency is not obligated to make payments beyond the term of any particular appropriation of state or federal funds that may exist from time to time and that the contract may be terminated upon such without any penalty or future liability. (3-15-02)~~

~~103~~2. -- 110. (RESERVED)

111. SPECIFICATIONS -- POLICIES AND DEVELOPMENT.

01. Purpose. Unless exempted by these rules or by the administrator, all solicitations ~~and requests for quotations~~ require specifications. Specifications set forth the characteristics of the property to be acquired. Specifications serve as the basis for obtaining property adequate and suitable for the using agency's needs in a cost effective manner, taking into account the costs of ownership and operation as well as initial acquisition costs. Specifications shall be drafted clearly to describe the agency's needs and to enable the vendors to determine and understand the agency's requirements. Specifications shall, as much as practical, be nonrestrictive to provide an equal basis for participation by an optimum number of vendors and to encourage competition. This information may be in the form of a description of the physical, functional or performance characteristics, a reference brand name or both. It may include a description of any required inspection, testing or preparation or delivery. Specifications may be incorporated by reference or contained in an attachment. (3-15-02)()

02. Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of purchase requisitions their principal functional or performance needs. (3-15-02)

03. Preference for Commercially Available Products. Requirements shall be satisfied by standard commercial products whenever practicable. (3-15-02)

04. Brand Name or Equal Specification. (3-15-02)

a. A brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest. (3-15-02)

b. A brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" and shall state that products substantially equivalent to those designated will be considered for award. (3-15-02)

c. Unless the buyer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics required. (3-15-02)

d. Where a brand name or equal specification is used, the document shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to restrict competition. (3-15-02)

05. Brand Name Specification. (3-15-02)

a. Since use of a brand name specification is restrictive, such a specification may only be used when the administrator or designee makes a written determination. Such determination may be in any form, such as a purchase evaluation or a statement of single manufacturer justification. The written statement must state specific reasons for use of the brand name specification. (3-15-02)

b. The administrator shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one (1) source can supply the requirement, the acquisition shall be made under Section 67-5720. ~~of the~~ Idaho Code. (3-15-02)()

06. Specification of Alternates May Be Included. A specification may provide alternate descriptions of property where two (2) or more design, functional or performance criteria will satisfactorily meet the agency's requirements. (3-15-02)

112. CONTRACT TERMS - POLICIES AND LIMITATIONS.

01. Prohibited Terms. Purchasing authorities do not have the authority to bind the state of Idaho or an agency to the following terms. If a contract contains such a term, the term shall be void pursuant to Section 67-5725, Idaho Code. ()

a. Terms waiving the sovereign immunity of the state of Idaho. ()

b. Terms subjecting the state of Idaho or its agencies to the jurisdiction of the courts of other states. ()

c. Terms limiting the time in which the state of Idaho or its agencies may bring a legal claim under the contract to a period shorter than that provided in Idaho law. ()

d. Terms imposing a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code. ()

02. Terms Requiring Special Consideration. ()

a. Unless specifically authorized by the Idaho legislature, terms requiring an agency or the state of Idaho indemnify a vendor shall be subject to the provisions of Section 59-1015, Idaho Code, and require an appropriation by the Idaho legislature. Indemnification terms not specifically authorized by the Idaho legislature or subject to appropriation shall be void pursuant to Section 67-5725, Idaho Code, and Section 59-1016, Idaho Code. ()

b. Purchasing authorities shall consult with legal counsel prior to accepting terms submitting the contract to arbitration or waiving the state of Idaho's right to a jury trial. ()

113. -- 124. (RESERVED)

125. CONTRACT ADMINISTRATION.

01. General. Agencies shall assign an individual contract manager for each service contract that meets or exceeds the sealed procedure limit established by Subsection 040.01 of these rules. A contract manager shall be the individual selected by the agency to administer the contract on behalf of the agency, including monitoring compliance with the contract terms and serving as the primary agency contact with the division for the procurement. *The agency may select the procurement contact or another individual as the contract manager. Prior to the contract award, all contract managers shall complete a training program approved by the administrator or developed by the agency and approved by the administrator.* ()

02. Contract Renewals and Extensions. Unless approved by the administrator or specified in the contract, a contract renewal or extension may not be executed more than six (6) months prior to the expiration of the contract. ()

03. High Dollar Service Contracts. *Unless exempted in writing by the administrator or by these rules, the following additional requirements apply to high dollar service contracts issued under Section 041 of these rules.* ()

a. Exemptions. ()

i. High dollar service contracts within the delegated authority purchase limit of an agency are

exempt from use of a project oversight board under Paragraph 125.03.c. of this section and third party monitoring under Paragraph 125.03.f. of this section. ()

ii. The administrator will establish a policy identifying guidelines for the award of policy exemptions to the requirements in this section and consult with affected agencies in the development and modification of such policy. Policy exemptions may require the implementation of one (1) or more of the requirements of this section. The policy will allow for revocation of policy exemptions and provide a process for reconsideration of any revocation and escalation to the director. The decision of the director concerning the revocation of an exemption shall be final and shall not be subject to appeal pursuant to Section 67-5733, Idaho Code, or a contested case as that term is defined under the provisions of Title 67, Chapter 52, Idaho Code. ()

b. Project Management. Contract performance for high dollar service contracts shall be managed by a project manager engaged by the requisitioning agency. Project managers shall, at a minimum, be certified as a project management professional (PMP) through the Project Management Institute, other project management certification institution accepted by the administrator, or have demonstrated prior performance in the execution of projects similar in scope and complexity accepted by the administrator. If the project manager is not an agency employee, the engagement of a project manager shall comply with these rules. ()

c. Project Oversight Board. The requisitioning agency shall establish an oversight board for management of the contract. The oversight board's duties shall include monitoring the project manager, review of the reports of third party project monitors, and review of reporting provided to the division. The oversight board shall include no less than two (2) experts in the subject matter of the contract without a potential conflict of interest. For the purposes of this subsection, experts in the subject matter of the contract with a potential conflict of interest include individuals: ()

i. With a direct reporting relationship to any other individual providing supervision or management of the contract, other than the senior official of the agency; or ()

ii. Who are interested in the contract. An interest in the contract includes ownership in or employment by the company performing the contract of the individual or a spouse, parent, spouse's parent or a child of the individual. ()

d. Training. The project manager for a high dollar service contract shall complete a training program approved by the administrator. ()

e. Reporting. The project manager for a high dollar service contract shall ensure the division's buyer designated to administer the contract receives the reports, best practice checklists, and other information on the schedule set forth in the project administration agreement executed pursuant to Section 041 of these rules. ()

f. Third Party Project Monitoring. High dollar service contracts shall be monitored by an independent third party subject matter expert overseen by the project oversight board. The engagement of a third party subject matter expert shall comply with these rules. ()

~~1426~~. -- 999. (RESERVED)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.06.01 - RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING BILLING PROCEDURES OF THE OFFICE OF THE CHIEF INFORMATION OFFICER

DOCKET NO. 38-0601-1401 (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 2015 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of 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 67-5701 and 67-5747, Idaho Code, and HB 647 from the 2014 legislative session.

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 proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 471 through 476](#).

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:

This rule will not require a new or increased appropriation.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Erin Seaman, (208) 332-1876 or Greg Zickau, (208) 332-1875.

DATED this 31st Day of October 2014.

Teresa Luna, Director
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, Idaho 83720-0042
Phone: (208) 332-1827
Fax: (208) 334-2307

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 67-5701 and 67-5747, Idaho Code, and HB 647 from the 2014 legislative session.

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 22, 2014.

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:

This rule documents calculation methods for allocating technology overhead costs and for technology service charges billed from the Department of Administration, Office of the Chief Information Officer to State government organizations.

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

The specific descriptions of the fees or charges imposed are incorporated in the body of the rule. The formulas for the fees are outlined in the rule. Costs allocated are controlled by legislative appropriation. This rule documents historical practice for technology service fees and technology related overhead cost allocation.

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:

This rule will not require a new or increased appropriation.

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 June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 98](#).

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:

There are no materials to be incorporated by reference to this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Erin Seaman, (208) 332-1876 or Greg Zickau, (208) 332-1875.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0601-1401

IDAPA 38
TITLE 06
CHAPTER 01

**38.06.01 - RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING BILLING
PROCEDURES OF THE OFFICE OF THE CHIEF INFORMATION OFFICER**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 67-5701 and 67-5747, Idaho Code, and 2014 Idaho Session Law 227 that requires the Department of Administration to promulgate the billing methodology in agency rule. ()

001. TITLE AND SCOPE.

01. Title. This chapter is cited as IDAPA 38.06.01, "Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer". ()

02. Scope. This rule documents calculation methods for allocating technology overhead costs and for technology service charges billed from the Department of Administration to State government organizations. ()

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 these rules. Any such documents are available for public inspection and copying at the Department of Administration's central office. ()

003. ADMINISTRATIVE APPEALS.

The application of the methodology does not result in an order pursuant to Section 67-5201(12), Idaho Code. Accordingly, there are no administrative appeals provided under this chapter. Disputes regarding the application of the billing methodology to Idaho agencies shall be resolved by the Division of Financial Management. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- TELEPHONE NUMBER -- FAX NUMBER -- INTERNET WEBSITE ADDRESS.

01. Office. The central office of the Idaho State Department of Administration, Office of the Chief Information Officer, is located at 650 W. State St., Boise, ID 83720. ()

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

03. Mailing Address. The mailing address for the central office is Idaho State Department of Administration, Office of the Chief Information Officer, PO Box 83720-0042. ()

04. Telephone Number. The telephone number of the central office is (208) 332-1824. ()

05. Fax Number. The fax number of the central office is (208) 334-2307. ()

06. Internet Website Address. The Idaho State Department of Administration, Office of the Chief Information Officer's internet website is <http://cio.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. -- 009. (RESERVED)

010. DEFINITIONS.

01. Aggregated Costs. A component of network services which are shared by multiple Idaho agencies. ()

02. Billing Methodologies. The procedures or processes outlined in this chapter which result in a cost allocation or fee assessed to an Idaho agency. ()

03. Communications Systems. All present and future forms of hardware, software or services used or required for transmitting voice, data, video, or images over a distance. ()

04. Communications Services. Telecommunication provided through communications systems.()

05. Consolidated Services. Information technology services operated or provided by the Department which are shared by multiple agencies. ()

06. Cybersecurity Services. Resources, equipment, or systems necessary to protect official information technology and communications systems. ()

07. Department. The Idaho Department of Administration. ()

08. Direct Costs. A component of network services which are attributable to a single Idaho agency. ()

09. Direct Services. A component of communication services which are attributable to a single Idaho agency. ()

10. Fiscal Year. The Idaho government operating period for tracking finances which runs across calendar years from July 1st through June 30th. ()

11. Idaho Agency. Any agency of the state government created under the laws of the state of Idaho, including all officers, departments, divisions, bureaus, boards, commissions and institutions of the state. ()

12. Idaho Technology Authority. The body created by Section 67-5745B, Idaho Code, and any agency or body that succeeds to the powers granted to the Idaho Technology Authority. ()

13. Information Technology. All present and future forms of computer hardware, computer software, and services used or required for automated data processing, computer-related office automation, or communications systems. ()

14. Internet Service. Infrastructure, security and network services which connect an Idaho agency or information technology system to the World Wide Web. ()

15. Network Services. Services that interconnect or link information technology systems. ()

16. Number of Positions. The equivalent quantity of personnel assigned or working within an Idaho agency as determined by the Division of Human Resources or other official sources. ()

17. Shared Services. A component of information technology services which are shared by multiple organizations. ()

18. Supported Devices. Information technology equipment used by or supporting an Idaho agency which are operated or maintained by the Department. Examples of supported devices include laptops, personal

computers, servers, printers, and mobile phones. ()

19. Telephone Services. A specific subset of communications systems that are primarily used or required for transmitting voice signals over dedicated network services. ()

20. Usage Allocation. An alternative method for allocating cybersecurity or internet service costs which are based on measurable usage by an Idaho agency. ()

21. Workload Factors. Measurable or definable attributes that consume or require resources in providing information technology support to Idaho agencies. ()

011. -- 049. (RESERVED)

050. RESTRICTIONS.

01. Expenditure Recovery. No billing under this rule will be used to recover expenditures from the general fund by the Department. ()

02. Other Interagency Agreements. Billing methodologies under this rule do not preclude arrangement for other services through interagency agreement. ()

03. Cash Reserves. Average cash reserves of the Department over a twelve-month period will not exceed two (2) months operating reserve for the funds which receive revenue under this rule. ()

051. -- 099. (RESERVED)

100. IDAHO AGENCY INFORMATION TECHNOLOGY (IT) SUPPORT.

Idaho agencies receiving information technology support from the Department are billed based on the appropriation for costs set by the legislature. Cash for the appropriation is allocated to supported Idaho agencies on a proportional basis determined by two (2) workload factors, each applied to half of the total appropriation. The proportional costs from each workload factor are summed to derive a total allocation for a given Idaho agency. These two (2) workload factors are: ()

01. Number of Positions. The first factor is the number of positions equivalent to full-time positions. For example, an agency with ten percent (10%) of the total full-time equivalent positions of all supported Idaho agencies would be allocated ten percent (10%) of half the appropriation based on this workload factor. ()

02. Number of Supported Devices. The second factor is the number of supported devices (e.g. laptops, personal computers, servers, printers, mobile phones, etc.) For example, an agency with fifteen percent (15%) of the total supported device count for all supported agencies would be allocated fifteen percent (15%) of half the appropriation based on this workload factor. ()

101. -- 199. (RESERVED)

200. NETWORK SERVICES.

Idaho Agencies are billed for usage of network services contracted by or through the Department based on the cost of contracted services plus a fee to fund the appropriation set by the legislature. There are two (2) types of services billed under this rule: direct costs and aggregate costs. Direct costs are attributable to an individual Idaho agency. Aggregate costs are for services shared by more than one (1) Idaho agency. ()

01. Direct Costs. Direct costs are allocated based on the total cost of the network service, including the percent of the total cost represented by the network service provided to the Idaho agency. For example, an Idaho agency purchasing five percent (5%) of network services would be allocated five percent (5% of the appropriation set by the legislature. ()

02. Aggregated Costs. Charges for aggregated network services are shared across using Idaho agencies based on the per unit quantities purchased by the using Idaho agency. The per unit cost is based on the total

cost for the aggregated service divided by the total quantity of units purchased and includes the percent of the total cost represented by the aggregated service provided to the Idaho agency to fund the appropriation set by the legislature. ()

201. -- 299. (RESERVED)

300. TELEPHONE SERVICES.

Idaho agencies using telephone services contracted or provided by the Department, are billed based on the total cost of telephone services, including a fee to fund the appropriation set by the legislature. There are two (2) types of telephone service billed under this rule: shared services and direct services. A prorated portion of the appropriation will be recovered through allocations on shared services. The balance of the prorated appropriation will be recovered through allocations on direct services. ()

01. Prorating Appropriation. The division of the appropriation will be determined by the percent of distribution between shared services and direct services. For example, if seventy-five percent (75%) of all telephone services are shared services, then seventy-five percent (75%) of the appropriation will be funded through allocations on shared services. ()

02. Shared Services. Costs are allocated based on the total cost of the telephone service and include the percent of the total cost represented by the telephone service provided to the Idaho agency. For example, costs to an Idaho agency purchasing fifteen percent (15%) of telephone services would include an allocation of fifteen percent (15%) of the prorated appropriation. ()

03. Direct Services. Costs are allocated based on the total cost of the telephone service and include the percent of the total cost represented by the telephone service provided to the Idaho agency. For example, costs to an Idaho agency purchasing five percent (5%) of telephone services would include an allocation of five percent (5%) of the prorated appropriation. ()

301. -- 399. (RESERVED)

400. CYBERSECURITY SERVICES.

Idaho agencies are billed for cybersecurity services contracted by or provided by the Department based on the appropriation for cybersecurity services set by the legislature. The Department is authorized two (2) alternative methods for determining allocations for cybersecurity services. Only one (1) alternative method may be used in a fiscal year. Changing from one alternative to the other requires approval of the Idaho Technology Authority. The two (2) alternatives are: ()

01. Number of Positions. The first alternative is to allocate costs based on the number of positions. For example, an Idaho agency with five percent (5%) of the total number of positions of all Idaho agencies would be allocated five percent (5%) of the appropriation for cybersecurity services. ()

02. Usage Allocation. The second alternative is to allocate costs based on the percent of total internet bandwidth utilization consumed by an Idaho agency. For example, an Idaho agency whose ninety-fifth (95th) percentile average utilization was ten percent (10%) of the aggregate ninety-fifth (95th) percentile average utilization would be allocated ten percent (10%) of the cybersecurity services appropriation. ()

401. -- 499. (RESERVED)

500. IDAHO TECHNOLOGY AUTHORITY.

Idaho agencies are billed based on the appropriation for the Idaho Technology Authority set by the legislature. Cash for the appropriation is allocated on a proportional basis determined by two (2) factors, each applied to half of the total appropriation. The proportional costs from each factor are summed to derive a total allocation for a given Idaho agency. These two (2) factors are: ()

01. Number of Positions. The first factor is the number of positions. For example, an Idaho agency with five percent (5%) of the total number of positions of all Idaho agencies would be allocated five percent (5%) of half the appropriation based on this factor. ()

02. Technology Expenditures. The second factor is the three-year (3) average expenditures on information technology and communications systems, as determined by data recorded by the State Controller. For example, an agency whose three-year average (3) expenditures were fifteen percent (15%) of the total three-year (3) average expenditures for all Idaho agencies would be allocated fifteen percent (15%) of half the appropriation based on this factor. ()

501. -- 599. (RESERVED)

600. INTERNET SERVICE.

Idaho agencies are billed for internet service contracted by or provided by the Department based on the cost of internet service. The Department is authorized two (2) alternative methods for determining allocations for internet service. Only one (1) alternative method may be used in a fiscal year. Changing from one alternative to the other requires approval of the Idaho Technology Authority. The two (2) alternatives are: ()

01. Number of Positions. The first alternative is to allocate costs based on the number of positions. For example, an agency with five percent (5%) of the total number of positions of all Idaho agencies would be allocated five percent (5%) of the appropriation for internet service. ()

02. Usage Allocation. The second alternative is to allocate costs based on the percent of total internet bandwidth utilization consumed by an Idaho agency. For example, an Idaho agency whose ninety-fifth (95th) percentile average utilization was ten percent (10%) of the aggregate ninety-fifth (95th) percentile average utilization would be allocated ten percent (10%) of the cost for internet service. ()

601. -- 699. (RESERVED)

700. CONSOLIDATED SERVICES.

Idaho agencies using consolidated services are billed for the cost of the consolidated services on a per user basis, where the total costs of a consolidated service are divided by the total number of users and billed to a given Idaho agency based on the number of users in the Idaho agency. ()

701. -- 999. (RESERVED)