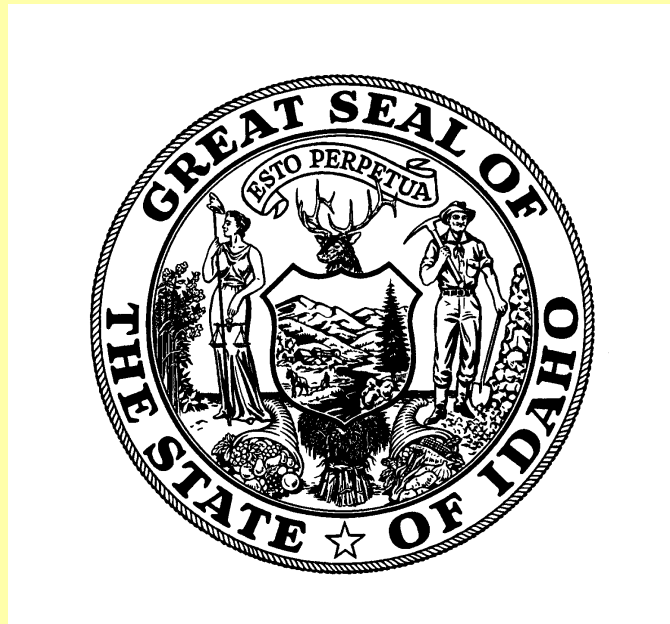


PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
House State Affairs Committee
65th Idaho Legislature
First Regular Session – 2019**



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2019

HOUSE STATE AFFAIRS COMMITTEE

ADMINISTRATIVE RULES REVIEW

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DOCKET NO. 31-1101-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 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 Sections 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 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 61-515, 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 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 419-420](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Edward Jewell, Deputy Attorney General, at (208) 334-0314.

Dated this 31st day of October, 2018.

Diane M. Hanian, Commission Secretary

Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

472 W. Washington Street
Boise, ID 83702-5918
Tel: (208) 334-0338
Fax: (208) 334-03762

THE FOLLOWING NOTICE 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 proposed rulemaking procedures. This action is authorized pursuant to Section 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 Utility Safety and Accident Reporting Rules adopt by reference several national safety codes applicable to electric, telephone, and natural gas utilities and federal safety regulations applicable to natural gas and pipeline utilities. Currently, Rule 101 adopts the 2012 Edition of the National Electric Safety Code (“NESC”). The proposed rule would adopt the 2017 Edition of the NESC.

There have been several minor updates and revisions to the NESC, including amendments to the grounding rules, guy insulator rules, ice loading rule, work safety standards, and other non-substantive editorial corrections. Adopting the current NESC will help protect telephone company workers and utility workers as well as the general public.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because this proposed rule adopts updated national safety codes and is necessary for the safety of telephone company and utility employees and the public during the installation, operation, or maintenance of telephone lines or electric utility systems, as well as the general public.

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:

Adoption of the current NESC will promote the safety of telephone company and utility employees, customers, and the general public. Additionally, incorporation by reference will mitigate the need to publish hundreds of pages of safety code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Edward Jewell, Deputy Attorney General, at (208) 334-0314.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-1101-1801

101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (RULE 101).

The Commission adopts by reference the American National Standards Institute (ANSI) C2-201~~2~~⁷ National Electrical Safety Code (NESC), 201~~2~~⁷ Edition. The National Electrical Safety Code, 201~~2~~⁷ Edition, is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997 and may be ordered by calling 1-800-678-IEEE. All electrical and telephone corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of the NESC. ~~(3-29-12)~~()

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION
31.71.03 – RAILROAD SAFETY AND ACCIDENT REPORTING RULES
DOCKET NO. 31-7103-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 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 Sections 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 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 61-515, 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 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 421-422](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Edward Jewell, Deputy Attorney General, at (208) 334-0314.

Dated this 31st day of October, 2018.

Diane M. Hanian, Commission Secretary

Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

472 W. Washington Street
Boise, ID 83702-5918
Tel: (208) 334-0338
Fax: (208) 334-03762

THE FOLLOWING NOTICE 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 proposed rulemaking procedures. This action is authorized pursuant to Section 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Amends Section 102 regarding sanitary cups and sanitary drinking water by allowing commercially bottled water to be provided as drinking water for employees.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because this proposed rule is simple in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Edward Jewell, Deputy Attorney General, at (208) 334-0314.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-7103-1801

102. SANITARY CUPS AND SANITARY DRINKING WATER (RULE 102).

01. Water. An adequate supply of cool, clean, sanitary water, satisfactory for drinking purposes, shall be made available to all employees. Drinking water shall be obtained only from sources approved by the State Department of Health, ~~or~~ an approved water line, or commercially bottled water. (7-1-93)()

02. Water Containers. When necessary, this water shall be provided in suitable, clean, sterilized and sanitary containers conveniently placed for the use of employees, but not in toilet rooms. Each container shall be equipped with an approved type of fountain, approved faucet, or other approved dispenser. (7-1-93)

03. Cleansed and Sterilized. All containers used to furnish drinking water shall be thoroughly cleansed and sterilized as often as necessary to assure a clean and sanitary water supply. (7-1-93)

04. Common Drinking Cup Prohibited. The common drinking cup for public use is prohibited; either single service containers or drinking fountains with sanitary angle head, shall be used in lieu thereof. (7-1-93)

IDAPA 34 – OFFICE OF THE SECRETARY OF STATE

34.06.02 – RULES GOVERNING THE ELECTRONIC RECORDING OF PLATS, RECORDS OF SURVEY, AND CORNER RECORDS

DOCKET NO. 34-0602-1801 (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 2019 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 Sections 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 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 54-1208, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

The Secretary of State finds that it is in the public interest to implement a new chapter describing the process and requirements for electronic recording of plats, records of survey and corner records as the implementation of electronic recording will improve the efficiency of operations for those recording and the counties receiving the documents.

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 August 1, 2018, Idaho Administrative Bulletin, [Vol. 18-8, pages 144–147](#).

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:

There is no fiscal impact to the state of Idaho. The rule change will not increase costs to any state agency or the general funds of the state of Idaho because the rule relates to the method of recording legal documents in a courthouse in a more efficient and cost-effective manner.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tom Judge at (208) 373-7210.

Dated this 6th day of September, 2018.

Chad Houck
Deputy Secretary of State
P.O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2862
Fax: (208) 334-2282
E-mail: chouck@sos.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-903(9) and 67-906(1)(c), Idaho Code.

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

PUBLIC HEARING ON PROPOSED RULE
Wednesday, August 22, 2018 – 10:00 a.m.

**Idaho Board of Professional Engineers
& Land Surveyors Office**
1510 E. Watertower Street, Ste. 110
Meridian, ID 83642

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 amendments will implement consistent standards for electronically filing and recording plats, records of survey and corner records in county courthouses.

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

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

There is no fiscal impact to the general fund. The rule change will not increase costs to any state agency or the general funds of the state of Idaho because the rule relates to the method of recording legal documents in a courthouse in a more efficient and cost-effective manner.

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 6, 2018 Idaho Administrative Bulletin, [Volume 18-6, page 108](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith Simila at (208) 373-7210.

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 August 22, 2018.

DATED this 28th day of June, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 34-0602-1801

**IDAPA 34
TITLE 06
CHAPTER 02**

**34.06.02 – RULES GOVERNING THE ELECTRONIC RECORDING OF PLATS,
RECORDS OF SURVEY, AND CORNER RECORDS**

000. LEGAL AUTHORITY.

In accordance with Section 67-903(9), Section 50-1304, 55-1606, and 55-1906 Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute electronic filing or recording of land surveying drawings and forms not inconsistent with the Uniform Real Property Electronic Recording Act enacted as Title 31, Chapter 29, Idaho Code and IDAPA 36.06.01 Rules Governing the Electronic Recording of Real Property. ()

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 34.06.02, “Rules Governing the Electronic Recording of Plats, Records of Survey, and Corner Records,” IDAPA 34, Title 06, Chapter 02. ()

02. Scope. These rules will govern the electronic filing, recording and retrieval of plats, records of survey and corner filing and perpetuation forms - known as corner records in the county recording offices under Title 50, Chapter 13, and Title 55, Chapters 16 and 19, Idaho Code. Only documents signed and sealed by a licensed professional land surveyor may be submitted for electronic filing or recording as governed by this chapter. Additional signatures and approvals are required by the county for plats as described in Title 50, Chapter 13, Idaho Code. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, documents relating to the interpretation of these rules, and to the documentation of compliance with this chapter, are available for public inspection and copying at the Office of the Secretary of State or the Office of the Board of Licensure for Professional Engineers and Land Surveyors. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the electronic filing, recording or retrieval requirements. ()

004. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Document. The meaning will be the same as provided in Section 31-2902, Idaho Code. ()

- 02. Electronic Document.** The meaning will be the same as provided in Section 31-2902, Idaho Code. ()
- 03. Electronic Recording.** The delivery and return of an electronic document for the purpose of recording that document with the participating recorder. ()
- 04. Electronic Signature.** The meaning will be the same as provided in 31-2902(4), Idaho Code. ()
- 05. Participating Recorder.** A county recorder who has elected to accept Electronic Documents for filing, recording or retrieval. ()
- 06. CAD (Computer-Aided Drafting).** Software used to create drawings in vector format. ()
- 07. DWG (Drawing).** A proprietary binary file format used for storing two- and three-dimensional design data and metadata. It is the native format for several CAD packages including DraftSight, AutoCAD™, IntelliCAD™ (and its variants), Caddie™ and Open Design Alliance compliant applications. ()
- 08. DXF (Drawing eXchange Format).** A file extension for a graphic image format typically used with AutoCAD™. ()
- 09. PDF (Portable Document Format).** The meaning shall be the same as provided in IDAPA 34.06.01, Rules Governing the Electronic Recording of Real Property. ()
- 10. TIFF (Tag Image File Format).** The meaning shall be the same as provided in IDAPA 34.06.01, “Rules Governing the Electronic Recording of Real Property.” ()
- 11. Submitter.** A professionally licensed land surveyor or a person designated by a professionally licensed land surveyor who requests that an electronic document be filed or recorded. ()
- 011. ELECTRONIC FILING AND RECORDING.**
In addition to the following, electronic documents will conform to IDAPA 34.06.01, Rules Governing the Electronic Recording of Real Property. ()
- 01. Plats And Records Of Survey.** Plats and records of survey, which utilizes scanned ink-signed documents or documents that have been created and signed electronically for the purposes of electronic recording must include a PDF or TIF(F) electronic file in the format accepted by the participating recorder. The digital file must also comply to the following standards: ()
- a. Finished size 18 x 27 as required by 50-1304 or 55-1905, Idaho Code; ()
 - b. 2-COLOR BLACK/WHITE (1BPPP); ()
 - c. TIF(F) electronic files and/or scanned images will have a 400 DPI minimum resolution; ()
 - d. Include an image of the land surveyor's seal and an electronic signature; ()
 - e. Multiple sheets may be combined into one electronic file, if accepted by the participating recorder. ()
- 02. Corner Record And Filing Forms.** Corner record and filing forms – known as corner records, which utilize scanned ink-signed documents or documents that have been created and signed electronically for the purposes of electronic recording must include a PDF or TIF(F) electronic file in the format accepted by the participating recorder. The digital file will be compliant with the requirements of IDAPA 10.01.03, “Rules for Corner Perpetuation and Filing,” and must also comply with the following minimum standards: ()
- a. Finished size 8.5 x 14; ()

- b. 2-COLOR BLACK/WHITE (1BPPP); ()
- c. TIF(F) and/or scanned images must have a 400 DPI minimum resolution; ()
- d. Include an image of the land surveyor's seal and an electronic signature; ()
- e. Multiple sheets may be combined into one electronic file if accepted by the participating recorder.
Only one file is allowed for each corner record. ()

012. RETRIEVED FILES.

01. Plats and Records Of Survey Retrieval. The files retrieved must be legible at the size reproduced under Subsection 011.01 of this chapter. ()

02. Corner Record Retrieval. The files retrieved must be legible at the size reproduced under Subsection 011.02 of this chapter. ()

013. PARTICIPATING RECORDER.

01. Documents Accepted. A participating recorder may elect to accept electronic documents containing electronic signatures that the participating recorder has the technology to support. Participating recorders may accept corner records, records of survey, or plats or any combination of the three. ()

02. Authentication. Land surveyors must use electronic signatures that are authenticated by a third-party security certificate. A participating recorder has no additional responsibility to independently authenticate electronic signatures. ()

014. MINIMUM STANDARDS.

01. Forms. Forms for corner records must comply with the requirements of IDAPA 10.01.03 and are available from the Board of Licensure for Professional Engineers and Land Surveyors. ()

02. Corner Records. Minimum standards for corner records are as required in Title 55 Chapter 16, Idaho Code. ()

03. Records of Survey. Minimum standards for records of survey are as required in Title 55 Chapter 19, Idaho Code. ()

04. Plats. Minimum standards for plats are as required in Title 50, Chapter 13, Idaho Code. ()

05. Compliance. Corner records, records of survey, or plats must comply with the requirements of this chapter and the minimum standards prior to electronically filing or recording. ()

015. -- 999. (RESERVED)

IDAPA 38 – DEPARTMENT OF ADMINISTRATION
38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX
DOCKET NO. 38-0409-1802 (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 2019 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 Sections 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 effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5708, 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 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 401 through 409](#).

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:

Funding for management of the property has been legislatively provided. Existing resources will be used to implement the administrative rules governing use of the property.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith Reynolds, Deputy Director, at (208) 332-1812 or via email at keith.reynolds@adm.idaho.gov.

Dated this 4th day of October, 2018.

Keith Reynolds
Deputy Director
Department of Administration
650 W. State St.
P. O. Box 83720
Boise, ID 83720-0013
Phone: (208) 332-1812
Fax: (208) 334-2307

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5708, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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 Chinden Office Complex property was transferred to state control on December 21, 2017 and required immediately applicable rules to govern its use. Temporary rules effective December 21, 2017 were promulgated and published in the February 7, 2018 Administrative Bulletin, **Vol. 18-2, pages 30 through 38**. The proposed rules are now being promulgated. The rulemaking uses the existing rules framework for the capitol mall and multi-tenant facilities and applies it in a single chapter to the new office complex. Variations to accommodate the sports facilities and private entity tenants are included, however, the majority of the provisions are those in place for the capitol mall and multi-tenant facilities elsewhere in the state.

Amendments to the temporary rules, published in this Bulletin under Docket No. 38-0409-1801, provide revisions related to the nature of the office campus complex that differ from the capitol mall and that have come to light as the Department of Administration has assumed management of the campus. Changes include provisions regarding parking in fire lanes and other restricted areas, placing literature on parked cars, the elimination of a reservation system for public use of the sports fields, and addressing the danger to pets and persons in the campus waterways. These changes have been incorporated into the proposed rule published following this notice.

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

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

Funding for management of the property has been legislatively provided. Existing resources will be used to implement the administrative rules governing use of the property.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because temporary rulemaking was appropriate pursuant to Section 67-5226(1)(a), Idaho Code, in order to protect the property, its tenants and the public. The Department will consider all public comment on the proposed rules received from all affected parties.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Keith Reynolds, Deputy Director, at 208-332-1812 or via email at keith.reynolds@adm.idaho.gov.

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 26, 2018.

DATED this 15th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0409-1802

IDAPA 38
TITLE 04
CHAPTER 09

38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX

000. LEGAL AUTHORITY.

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to manage state facilities and to promulgate rules governing state facilities. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.09, “Rules Governing Use of the Chinden Office Complex.” ()

02. Scope. These rules contain the provisions for use of the exterior and interior of the Chinden Office Complex. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department’s office. ()

003. ADMINISTRATIVE APPEALS.

These rules do not provide for appeals of the requirements for use of the Chinden Office Complex. ()

004. INCORPORATION BY REFERENCE.

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

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

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

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

03. Street Address. The Department’s principal place of business is located at 650 West State Street,

Boise, Idaho 83702-5972. ()

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

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

007. SEVERABILITY IN CHINDEN OFFICE COMPLEX.

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

008. -- 009. (RESERVED)

010. DEFINITIONS.

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

02. Chinden Office Complex. The Chinden Office Complex is bounded to the north by West Chinden Boulevard, to the west by North Cloverdale Road, to the east by North Five Mile Road, and to the south by the Jones-Stiburek, Orchid Point, De Meyer Estates No. 7, Hickories No. 1, 9 and 12, Hickories East and EMS Avenue Subdivisions. The following buildings and the grounds adjacent to such buildings located in Boise, Idaho shall be the Chinden Office Complex under these rules: ()

a. 11301 West Chinden Boulevard, identified as Building 1 of the Chinden Office Complex. ()

b. 11311 West Chinden Boulevard, identified as Building 3 of the Chinden Office Complex. ()

c. 11321 West Chinden Boulevard, identified as Building 2 of the Chinden Office Complex. ()

d. 11331 West Chinden Boulevard, identified as Building 8 of the Chinden Office Complex. ()

e. 11341 West Chinden Boulevard, identified as Building 4 of the Chinden Office Complex. ()

f. 11351 West Chinden Boulevard, identified as Building 6 of the Chinden Office Complex. ()

g. 11361 West Chinden Boulevard, identified as Building 7 of the Chinden Office Complex. ()

h. 11371 West Chinden Boulevard, identified as Building 5 of the Chinden Office Complex. ()

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

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

05. Department. The Department of Administration. ()

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

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

- 08. Public Use.** Use that is not: ()
- a.** A State Event or Exhibit; ()
 - b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; ()
 - c.** State Maintenance and Improvements; or ()
 - d.** Use by a Tenant. ()
- 09. Recreational Facilities.** Facilities designated by the Director for Recreational Use. ()
- 10. Recreational Use.** Use for leisure or athletic purposes such as picnicking and sports practices or informal sports games. ()
- 11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. ()
- 12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. ()
- 13. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. ()
- 14. State Maintenance and Improvements.** Maintenance or improvement of the Chinden Office Complex by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, turf installation and repair, fertilizing and planting, and structural maintenance such as pressure washing, painting, and window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. ()
- 15. Tenant.** A state of Idaho officer, official, agency, board or commission or a public agency or a private individual or entity with a license or lease to use the Chinden Office Complex. ()
- 16. Tenant Space.** The portion of the exterior of the Chinden Office Complex licensed or leased to a private individual or entity and the portion of the interior of the Chinden Office Complex occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. ()
- 011. – 199. (RESERVED)**
- 200. USE OF THE CHINDEN OFFICE COMPLEX.**
- 01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the Chinden Office Complex is available for Public Use. ()
- 02. Prohibited Uses.** The following uses are prohibited at the Chinden Office Complex: ()
- a. Commercial Activity.** The Chinden Office Complex shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the Chinden Office Complex. The following are not commercial activity prohibited by this subsection: ()
 - i.** Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. ()

- ii. Concessions authorized by law. ()
- iii. Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official. ()
- iv. The conduct of business by a Tenant. ()
- b. Camping. ()
- c. Private Events and Exhibits, except use of the Recreational Facilities as authorized by these rules. ()
- d. Use by the public for press conferences, performances, ceremonies, presentations, meetings, rallies, receptions or gatherings. ()
- e. Use by the public for attended or unattended displays, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. ()

03. Public Access to Interior. Public access to the interior of the buildings at the Chinden Office Complex and to exterior Tenant Space at the Chinden Office Complex is limited to the conduct of business with the Tenant. ()

04. Priority of Uses. State Maintenance and Improvements shall have priority over all other use of the Chinden Office Complex. ()

201. HOURS OF USE.

01. Hours for Use by the Public. The hours for public access to the exterior of the Chinden Office Complex are from sunrise to sunset. The hours for public access to interior Common Space shall be as posted on the public entrance to each building at the Chinden Office Complex. ()

02. Public Parking Hours. Unless approved by the Director, the public shall not park motorized vehicles overnight at the Chinden Office Complex. ()

202. USE OF RECREATIONAL FACILITIES.

The Director may authorize reservation of Recreational Facilities under this subsection by a Tenant and the exclusion of members of the public from use of Recreational Facilities during reserved periods. Unless reserved by a Tenant, Recreational Facilities are available for Recreational Use by the public on a first-come, first-used basis from sunrise to sunset daily. ()

203. EQUIPMENT AND SUPPLIES.

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

204. ESTABLISHMENT OF PERIMETERS.

Security personnel and law enforcement may establish perimeters separating participants in Public Use of the Chinden Office Complex or State Events and Exhibits. Participants in and observers of any Public Use or State Events and Exhibits shall observe perimeters set pursuant to this section. ()

205. AREA CLOSURES.

The Director may direct that any portion of the Chinden Office Complex be closed for Public Use upon a finding that the closed portion of the Chinden Office Complex has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the Chinden Office Complex closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion

of the Chinden Office Complex. Circumstances presenting an imminent danger of damage to the Chinden Office Complex include, but are not limited to, the saturation of soil, turf or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. ()

206. – 299. (RESERVED)

300. RESTRICTIONS AND LIMITATIONS ON USE.

The restrictions and limitations on use of the Chinden Office Complex set forth in Sections 301 through 399 of these rules shall apply to all Public Use of the Chinden Office Complex. The lease or license of Tenant Space may vary these rules for use by the Tenant, its employees, and its invited guests. ()

301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.

01. Interference with Primary Use of Facility or Real Property. Public Use of the Chinden Office Complex shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the Chinden Office Complex include, but are not limited to, the conduct of business by private Tenants leasing or licensing a portion of the Chinden Office Complex, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. ()

02. Interference with Access. Public Use of the Chinden Office Complex shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the Chinden Office Complex. ()

302. MAINTENANCE AND IMPROVEMENTS.

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

303. MOTORIZED VEHICLES.

Motorized vehicles parked outside of designated parking areas may be towed without notice at the vehicle owner's expense. Public parking at the Chinden Office Complex is limited to the period the operator or passengers are using the Chinden Office Complex. Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. ()

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

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

305. ANIMALS.

The following shall apply to animals at the Chinden Office Complex: ()

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

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

b. No person shall feed, give, or offer food or any noxious substance to a wild animal at the Chinden Office Complex. ()

02. Domestic Animals. ()

a. Domestic animals are not allowed at the Chinden Office Complex unless leashed and under the control of the person bringing the animal to the Chinden Office Complex. ()

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

c. Persons bringing domestic animals to the Chinden Office Complex shall not permit the animal to swim or wade in irrigation ponds or canals at the Chinden Office Complex. ()

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

01. Plants. Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the Chinden Office Complex. ()

02. Grass. Dig in or otherwise damage grass areas at the Chinden Office Complex. ()

03. Irrigation Equipment. Interfere with, damage or remove irrigation equipment at the Chinden Office Complex. ()

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

05. Climbing. Climb or scale buildings, memorials, statues, trees, fences, or improvements at the Chinden Office Complex. ()

307. FOOD AND BEVERAGES.
Consumption of food and beverages at the Chinden Office Complex is subject to the following: ()

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

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

308. SMOKING.
All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the Chinden Office Complex. ()

309. FIRES, CANDLES, AND FLAMES.
Except in designated barbecue facilities, no fires, candles, or other sources of open flame are permitted at the Chinden Office Complex. ()

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

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

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

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

04. Ingress or Egress. No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Chinden Office Complex, or to restrict the flow of individuals or motor vehicles using the facility, or to restrict emergency egress or ingress. ()

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

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

07. Distribution of Literature and Printed Material. All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the Chinden Office Complex that such material is not discarded outside of designated trash receptacles. Literature and printed materials shall not be placed on parked vehicles at the Chinden Office Complex. ()

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

09. Removal of Items. All items brought to the Chinden Office Complex by the public shall be removed prior to the expiration of each day's hours of use by the public. Unless items are subject to report and transfer to the state treasurer as unclaimed property pursuant to Idaho law, the Director may authorize disposal of items left at the Chinden Office Complex. ()

311. ITEMS SUBJECT TO SEARCH.

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

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

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

312. PROHIBITED ITEMS.

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

313. (RESERVED)

314. UTILITY SERVICE.

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

315. LAW ENFORCEMENT AND FACILITY EXIGENCY.

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

316. COMPLIANCE WITH LAW.

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

317. HEALTH, SAFETY, AND MAINTENANCE OF CHINDEN OFFICE COMPLEX.

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

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

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

04. Fireworks. No person shall possess or use fireworks at the Chinden Office Complex. ()

05. Use of Waterways. No person shall swim, fish, or wade in waterways at the Chinden Office Complex. ()

318. -- 399. (RESERVED)

400. LIABILITY.

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

02. No Endorsement. Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in Public Use of the Chinden Office Complex. ()

401. – 999. (RESERVED)

IDAPA 38 – DEPARTMENT OF ADMINISTRATION
38.05.01 – RULES OF THE DIVISION OF PURCHASING
DOCKET NO. 38-0501-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 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 effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-9205, 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 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 454 through 464](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sarah Hilderbrand, Administrator, at (208) 332-1612 or at sarah.hilderbrand@adm.idaho.gov.

Dated this 29th day of October, 2018.

Sarah Hilderbrand, Administrator
Division of Purchasing
Department of Administration
304 N. 8th Street, Room 403
P. O. Box 83720
Boise, ID 83720-0075
Telephone: (208) 332-1612
Fax: (208) 327-7320

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-9205, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 address the format for preservation of purchasing records within the purchasing authority; add a solicitation method allowing for competitive negotiations, when justified by the agency and authorized by the administrator; clarify the use of electronic communications during the solicitation process; identify additional examples of potentially exempt acquisitions; add a provision concerning information technology purchased through a reseller; and also include minor modifications for consistency within the rules, and to further clarify, consolidate and/or modernize existing language.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 120](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sarah Hilderbrand at (208) 332-1612 or at sarah.hilderbrand@adm.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0501-1801

011. DEFINITIONS.

Unless defined otherwise in these rules, the definitions set forth in Section 67-9203, Idaho Code, shall apply to this chapter. (3-29-17)

01. Administrator. The administrator of the division of purchasing. (3-29-17)

02. 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)

03. Brand Name or Equal Specification. 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. (3-29-17)

04. Brand Name Specification. A specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-29-17)

05. 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 authority. (3-29-17)

06. Competitive Negotiation. Procedure by which the buyer negotiates with one (1) or more responsive offerors in accordance with the provisions of an invitation to negotiate. ()

067. Concession Services. The granting by the purchasing authority of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-29-17)

078. Consultant Services. 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. (3-29-17)

~~**08. Contract.** 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 includes purchase orders issued by the purchasing authority. (3-29-17)~~

09. Contract Administration. Actions taken related to changes to contracts, including amendments, renewals and extensions; as well as receipt, review and retaining of the contract and contract-related documents; and exercise of remedies. (3-29-17)

10. Contract Management. Actions taken to ensure that both the agency and contractor comply with the requirements of the contract. Includes some functions related to solicitation development and contract development and close-out; also includes, but is not limited to regular monitoring of the contractor's day-to-day performance, evaluation of deliverables, invoice review, payment approval, progress tracking, regular status meetings, and management of state-owned property and other resources used in contract performance management.

- (3-29-17)
11. **Director.** The chief officer of the department of administration. (3-15-02)
12. **Division.** The division of purchasing of the department of administration as established by Section 67-9204, 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)
13. **Document.** When used in these rules, may include electronic documents. (3-15-02)
14. **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)~~ ()
15. **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)
16. **Informal Solicitation.** Procedure by which the buyer solicits informal competitive quotes by means of a request for quote. (3-29-17)
17. **Invitation to Bid.** All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-29-17)
- ~~18.~~ **Invitation to Negotiate.** All documents, whether attached or incorporated by reference, utilized for soliciting proposals for a competitive negotiation. ()
- ~~19.~~ **Offeror.** A vendor who has submitted a response to a request for proposals or invitation to negotiate for property to be acquired by the state. ~~(3-29-17)~~ ()
- ~~20.~~ **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 purchase specified property under the terms and conditions set forth in the contract. (3-29-17)
- ~~21.~~ **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, actuarial, 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. (3-29-17)
- ~~22.~~ **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. When used in conjunction with an invitation to negotiate, a proposed may or may not initially include pricing information, as provided in the solicitation. ~~(3-15-02)~~ ()
- ~~23.~~ **Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)
- ~~24.~~ **Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)
- ~~25.~~ **Purchase Order.** Notification to the contractor to provide the stated property under the terms and conditions set forth in the purchase order. It may include the form of the state’s acceptance of a vendor’s quote, proposal or bid. See also definition of contract. (3-29-17)
- ~~26.~~ **Purchasing Authority.** The division or an agency exercising authority based on a delegation of

authority by the administrator to an individual or an agency; or as otherwise provided under these rules to engage in the conduct of purchasing. (3-29-17)

267. Quote. An offer to supply property in response to a request for quote and generally used for informal solicitation procedures. (3-29-17)

278. 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. (3-29-17)

289. Request for Quote. The document, form or method generally used for purchases solicited in accordance with informal solicitation procedures. (3-29-17)

290. Requisition. A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing authority acquire the property. (3-29-17)

301. Sealed. Includes invitations to bid and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids and proposals manually sealed and submitted. (3-29-17)

312. Sealed Procedure Limit. That dollar amount, as established by these rules, above which the formal sealed procedure will be used. The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-29-17)

323. Small Purchase. An acquisition that costs less than the sealed procedure limit. (3-15-02)

334. Solicitation. An invitation to bid, a request for proposals, request for quote or other document or communication issued by the purchasing authority for the purpose of soliciting bids, proposals, or quotes to perform a contract. (3-29-17)

345. Specifications. The explicit property to be acquired by the state. Specifications include the scope of work and the performance and physical characteristics of property. (3-29-17)

356. State. The state of Idaho including each agency unless the context implies other states of the United States. (3-29-17)

367. Telecommunications. All present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-29-17)

378. Written. When used in these rules, may include an electronic writing. (3-15-02)

012. PRESERVATION OF RECORDS.

Records of a purchasing authority, which are created or held pursuant to these rules, may be kept in such format as prescribed by the purchasing authority responsible for record retention; and otherwise in accordance with record preservation and retention policies established by the agency designated by the legislature for such purpose. ()

013. FORM OF COMMUNICATION.

Any written communication authorized or required by these rules may be provided electronically, or in another format as designated by the administrator. ()

0124. -- 020. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

042. EXCEPTIONS TO COMPETITION.

Purchases meeting the following criteria need not be purchased by competitive solicitation, unless otherwise directed by the administrator: (3-29-17)

01. Emergency Purchases. Emergency purchases as authorized by Section 67-9221, Idaho Code, and Section 043 of these rules. (3-29-17)

02. Sole Source Purchases. Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-9221, Idaho Code, and Section 045. (3-15-02)

03. Reverse Auctions. Purchases through reverse public auctions as authorized by Section 67-9221, Idaho Code. (3-15-02)

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

05. Contracts with Other Public Agencies. Contracts with other public agencies as defined in Section 67-2327, Idaho Code, and authorized by Section 67-2332, Idaho Code. ()

056. 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)

067. Correctional Industries. Purchases of property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. (3-29-17)

078. 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 requesting 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 solicitation procedures and requirements. (3-29-17)

089. Existing Open Contracts. 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. (3-29-17)

109. Exempt Purchases. By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive solicitation that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-29-17)

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; (3-29-17)

iv. Property for which competitive solicitation procedures are impractical; ~~or~~ (3-29-17)()

v. Used property; (3-29-17)()

vi. Ongoing maintenance, upgrades, support or additional licenses for software or other information

technology solutions, including a change in the manner of solution delivery; which software or solution was originally acquired in compliance with the purchasing laws in effect at the time of acquisition; or ()

vii. Acquisition of property for direct resale. ()

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)

(BREAK IN CONTINUITY OF SECTIONS)

051. CONTENT OF SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

The following shall be included in an invitation to bid or a request for proposals: (3-29-17)

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

02. Specifications. Specifications developed in accordance with Section 111 of these rules. (3-29-17)

03. Contract Terms. Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-29-17)

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 or Pre-Bid Conference. The date, time and location of the conference must be included in the solicitation. (3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

074. MISTAKES.

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

01. Mistakes in Submission. 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 state or the fair treatment of other submitting vendors. (3-29-17)

02. Mistakes Discovered Before Opening. Mistakes discovered by a vendor prior to 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 authority before the 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. (4-6-15)

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. Sign in ink or provide an electronic signature, but only if it is clear from the submission that the submitting vendor intended to be bound by its terms. ()

iii. Acknowledge the receipt of an amendment, but only if: (3-29-17)

(1) It is clear from the submission that the submitting vendor received the amendment and intended to be bound by its terms; or (3-29-17)

(2) The amendment involved had a negligible effect on price, quantity, quality or delivery. (3-29-17)

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)

(BREAK IN CONTINUITY OF SECTIONS)

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 vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include vendors that submitted

unacceptable proposals. (3-29-17)

03. Classification of Proposals. For the purposes of this rule, the purchasing authority may establish criteria within the solicitation to classify proposals. ()

034. **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)

045. **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)

056. **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 authority's interest, and additional discussions will be conducted or the 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. (3-29-17)

067. **Application to Other Solicitation Types.** The provisions of this Section 083 may be utilized in other types of solicitations, in addition to requests for proposals, so long as the solicitation document provides for the possibility of discussions and includes a reference to this section. (3-29-17)

084. NEGOTIATIONS.

In accordance with Section 67-9205(12), Idaho Code, the administrator may negotiate acquisitions as follows: (3-15-02)

01. Use of Negotiations. Negotiations may be used under ~~this~~ these rules when the administrator determines in writing that negotiations may be in the best interest of the state including but not limited to the following circumstances: (3-29-17)()

a. Negotiations undertaken pursuant to a solicitation for competitive negotiation, in accordance with the provisions of Section 094 of these rules. ()

b. 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.c. There has been inadequate competition; (3-29-17)

d. 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 (3-29-17)

e. 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 extended time and expenditure of resources for a resolicitation. (3-29-17)

02. Examples. Examples of situations in which negotiations may be appropriate include but are not limited to: (3-29-17)

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 specifications or contract terms. (3-29-17)

03. Conditions of Use. Negotiations, as permitted by Subsection Paragraph 084.01.ed. of this rule, are subject to the following: ~~(3-29-17)~~()

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, unless concurrent negotiations are permissible, in accordance with the terms of the solicitation; ~~(3-15-02)~~()

e. If one (1) or more responsive offers does not exceed available funds, negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria or the specifications; (3-29-17)

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 canceled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

04. Timing of Use. If conducted as part of a small purchase or under the formal sealed procedure, 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, unless the administrator makes a written determination that it is in the state's best interest to proceed directly to negotiations in lieu of first conducting oral interviews and the best and final procedures. ~~(3-29-17)~~()

05. Termination of Negotiations. The purchasing authority may terminate negotiations at any time, in the best interest of the state. ()

(BREAK IN CONTINUITY OF SECTIONS)

094. COMPETITIVE NEGOTIATIONS.

Notwithstanding the provisions of Section 041 of these rules applicable to the formal sealed procedure, the administrator may authorize the use of competitive negotiations when it is determined that the use of negotiations may enable the state to more effectively identify and refine potential solutions, especially where the business need is complex or requires innovation. ()

01. Written Authorization. The administrator shall establish guidelines on how and when agencies may request to use competitive negotiations. Requests for authorization to utilize competitive negotiations must be provided in writing, in a format designated by the administrator. The request must provide the reasons that a formal sealed procedure is not practicable; as well as support for the use of competitive negotiations in order to meet a complex business need, solicit innovative solutions, enable the state to keep within approved program budgets, or to otherwise facilitate the receipt of the most cost-effective solution. Written authorization must be provided by the administrator in order for a purchasing authority to use competitive negotiations under this rule. ()

02. Form of Solicitation. Proposals under this rule shall be solicited pursuant to an invitation to negotiate. ()

03. Applicability of Other Rules. An invitation to negotiate shall be subject to the rules applicable to a request for proposals, except as otherwise provided. Modifications under Section 072 of these rules will be allowed after closing to the extent authorized within the invitation to negotiate. Section 083 of these rules, proposal discussion with individual offerors, shall not apply to an invitation to negotiate. ()

04. Content of Solicitation for Competitive Negotiation. Notwithstanding Section 051 of these rules, the following shall be included in an invitation to negotiate: ()

a. Submission Information. Information regarding the applicable closing date, time and location. ()

b. Solicitation Procedure. An outline of the invitation to negotiate process. ()

c. Specifications. Specifications developed in accordance with Section 111 of these rules, to the extent the purchasing authority determines adequate to inform interested vendors of the desired result. ()

d. Contract Terms. Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. ()

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

f. Incorporation by Reference. A brief description of any documents incorporated by reference that specifies where such documents can be obtained. ()

g. Pre-Proposal or Pre-Bid Conference. The date, time and location of the conference must be included in the solicitation. ()

h. Evaluation and Award Criteria. A summary of evaluation criteria to be used in determining property acceptability; evaluation criteria to classify proposals and determine the competitive threshold for negotiations; as well as the criteria that will be used to make the lowest responsive and responsible determination. ()

05. Cost. The buyer may request cost proposals at any time during the invitation to negotiate process; and may elect to request cost proposals only from those offerors determined to be in the competitive range for award ("finalists"), in accordance with the instructions contained within the solicitation. ()

06. Conduct of Negotiations. Negotiations shall be conducted in accordance with the procedure outlined in the invitation to negotiate, which may include multiple iterations of submissions and discussions in order to classify proposals; allow for revisions to the solicitation proposal(s), including any requirements, terms, conditions or specifications; and to determine finalists. The negotiation process ends upon submission of the best and final offer(s) from the finalists, after which time vendors shall not be allowed to make further modifications to their proposal(s). ()

0945. -- 100. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

114. INFORMATION TECHNOLOGY RESALE.

01. Purpose. The use of resellers is common in the acquisition of information technology; however, the use of a reseller to acquire information technology attempts to separate the application of the State Procurement Act from the contract terms required by the information technology owner for use of the information technology. The requirements of this rule are in place to apply Idaho law to the contract terms required by the information technology owner, when information technology is acquired through a reseller. ()

02. Terms. All license, sale, or use terms imposed by the information technology owner shall be subject to the following: ()

a. Licensing, sale, or use terms required by a third party owner of information technology sold through a reseller shall be subject to these rules, specifically including Subsection 112.01 and Paragraph 112.02.a. of these rules. If a contract contains a term prohibited by Section 112 of these rules, the term shall be void pursuant to Section 67-9213, Idaho Code. ()

b. The provisions of Section 67-9212, Idaho Code, shall apply to licensing, sale or use terms required by a third party owner of information technology sold through a reseller. Purchasing authorities are not authorized to accept or modify the terms of licensing, sale or use through click-wrap, click-through or similar acceptance methods unless such acceptance or modification is approved in writing by the administrator. ()

1145. -- 999. (RESERVED)

IDAPA 40 – COMMISSION ON THE ARTS
40.01.01 – RULES OF THE IDAHO COMMISSION ON THE ARTS
DOCKET NO. 40-0101-1801
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 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 Sections 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 effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5605, 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 5, 2018 Idaho Administrative Bulletin, [Vol. 18-9, pages 416 through 430](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael Faison, Executive Director, at (208) 334-2119.

Dated this 4th day of October, 2018.

Michael Faison
Executive Director
Idaho Commission on the Arts
The Warden's Residence
2410 Old Penitentiary Rd. N.
P. O. Box 83720
Boise, ID 83720-0008
Phone: (208) 334-2119
Fax: (208) 334-2488

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2018.

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:

Proposed rule changes are necessary to add folk and traditional arts to the list of artistic disciplines for which Fellowships are awarded, thereby acknowledging the artistic excellence of individuals who maintain Idaho's artistic traditions, with equal stature alongside Idaho artists who create work in more recognized arts disciplines. Further changes revise a matching requirement that currently restricts college and university grant recipients to the use of non-public funds when matching grants from the Commission—a restriction not placed on any other public or not-for-profit grant recipient. The remaining rule changes are needed to update terminology and process explanations. The changes are housekeeping items that do not affect the availability of grants—they update, clarify, and simplify grant application terminology and procedures.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because interested parties have been included in informal negotiations. Although the rule changes concerning fellowships were not formally negotiated, the proposed rules arose from the Commission's strategic planning process that included 18 regional planning meetings across Idaho, during which interested parties were consulted and support this proposed rulemaking. The rule changes concerning grants arose from the feedback of affected Idaho colleges and universities, which were consulted and gave unanimous support for the proposed rules. The remaining rule changes are simply housekeeping 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael Faison, Executive Director, at (208) 334-2119.

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 September 26, 2018.

DATED this 24th day of July, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 40-0101-1801

100. DEFINITIONS.

01. **Applicant.** An individual or organization meeting the criteria set forth in Section 202 of these rules, which has submitted an application for a program offered by the Commission. (4-6-05)

02. **Apprentice.** A student with knowledge of a traditional art who is studying or seeking to study the traditional art under a master and who affirms a commitment to continue practicing the traditional art after the apprenticeship has ended. (4-6-05)

03. **Artist.** ~~An individual who practices the arts as the individual's profession.~~ An individual who practices the arts as a profession and derives a significant portion of the individual's livelihood from performing the arts or engages in frequent or regular exhibitions, performances, publications, or similar public art displays. (4-6-05)()

04. **Art.** The product of an artist's work. Art includes, but is not limited to, live performances, manuscripts and writings, folk and traditional arts, ~~videotapes, audiotapes and compact disks~~ recordings of audio or moving images, photographs, prints, paintings, sculptures, ceramics, drawings, and installations. (4-6-05)()

05. **Arts.** The conscious production or arrangement of sounds, colors, forms, or other elements in a manner that affects the senses. The arts shall include, but are not limited to, the disciplines of literature, performing arts, and visual arts. (4-6-05)

06. **Capital Expenditures.** Costs or expenses for the acquisition of or the modification or improvements to real property or fixtures to real property. (4-6-05)

07. **Commission.** The Idaho Commission on the Arts. (4-6-05)

08. **Matching Contributions.** (4-6-05)

a. In-kind Contributions. Services and real or personal property, or the use thereof, donated by organizations or individuals to the applicant specifically to offset expenses associated with the application. (4-6-05)()

b. Cash Contributions. Funds raised by the applicant specifically for the subject of the application. (4-6-05)

09. **Discipline.** A grouping of types of arts. The Commission uses the following discipline categories: (4-6-05)

a. Literature. Arts disciplines resulting in written art. Literature artists include, but are not limited to, fiction, creative nonfiction, and poetry. (4-6-05)

b. Performing Arts. Arts disciplines resulting in live or recorded performances. ~~Artists engaged in the~~ Performing arts include, but are not limited to, dancers, musicians, theatre, and filmmaking, and their constituent disciplines such as choreography, actors, playwrights, set and costume designers, composition, playwriting, and performers screenwriting. (4-6-05)()

c. Visual Arts. Arts disciplines resulting in works that are viewed by the public. Visual artists include, but are not limited to, painters, crafters, photographers, printmakers, sculptors, video artists, architects, ceramists, metal smiths, paper, glass and art, fiber artists, mixed-media artists, glass artists, designers, book artists,

installation artists, ~~artists working in and art using~~ new ~~technologies, outsider or visionary artists, and folk and traditional arts involving craft~~ media. (4-6-05)()

d. Folk and Traditional Arts. Arts disciplines practiced by an ethnic or cultural group for multiple generations and based upon the ethnic or cultural group's historical practices. Folk and traditional arts include, but are not limited to, music, song, storytelling, vernacular architecture, crafts, tools and trades, occupational practices, personal experience stories, jokes, rhymes, games, and foodways such as food preparation, preservation, and presentation. ()

10. Fiscal Year. The period between July 1 of one (1) calendar year and June 30 of the following calendar year. (4-6-05)

11. Master. An individual who has learned traditional art skills informally and has received peer recognition for achieving the highest level of artistry according to community standards. (4-6-05)

12. Program. The categories for the award or grant of funds or recognition by the Commission described in Sections 300 through 503 of these rules. (5-8-09)

13. Program Guidelines. The application and review criteria for a program published by the Commission for each grant or award period. (5-8-09)

14. Recipient. An applicant receiving an award or grant under a Commission program. (4-6-05)

~~**15. Traditional Art.** The arts practiced by an ethnic or cultural group for multiple generations and based upon the ethnic or cultural group's historical practices. Traditional arts include, but are not limited to, music, song, storytelling, vernacular architecture, crafts, tools and trades, occupational practices, personal experience stories, jokes, rhymes, games and foodways such as food preparation, preservation and presentation. (4-6-05)~~

(BREAK IN CONTINUITY OF SECTIONS)

202. APPLICANTS.

01. Categories of Applicants. Applicants must fall within one (1) of the following categories: (4-6-05)

a. An individual artist or arts administrator meeting the criteria set forth in Subsection 202.02, of this rule, who is submitting an application based solely on the applicant's work. (4-6-05)

b. An organization meeting the criteria set forth in Subsection 202.03 of this rule. (4-6-05)

c. A collaboration of individual artists ~~where the majority of the artistic effort is that of the primary represented by an~~ individual. The application must identify the primary individual as the applicant and the applicant must sign the application, meet the criteria set forth in Subsection 202.02 of this rule, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in this section. (4-6-05)()

02. Requirements for Individuals. If the applicant is an individual, the applicant must: (4-6-05)

a. Be a citizen of the United States or a permanent legal resident or a refugee. (4-6-05)

b. Be a resident of the state of Idaho for at least twelve (12) months before the date of the application. (4-6-05)

c. Be over the age of eighteen (18) before the date of the application, unless the applicant is an

apprentice. (5-8-09)

03. Requirements for Organizations. If the applicant is an organization, the applicant must: (4-6-05)

a. Have been operating in the state of Idaho for at least twelve (12) months before the date of the application. (4-6-05)

b. Be a school, unit of local, county, tribal, or state government, or an organization determined to be tax exempt by the United States Internal Revenue Service whose primary purpose is the production, presentation, or support of the arts. (4-6-05)

i. Unincorporated organizations may submit an application through another tax-exempt organization as its designated fiscal agent. Service as a fiscal agent does not exclude an organization from applying for programs on behalf of the organization serving as a fiscal agent. (3-29-10)

ii. Tax-exempt organizations must have an independent board of directors empowered to formulate policies and be responsible for the governance and administration of the organization, its programs, and its finances. (4-6-05)

c. Compensate artists and arts administrators at no less than the legal minimum wage or in accordance with a written agreement. (4-6-05)

04. Application and Funding Limits. An applicant shall submit no more than one (1) application per program each fiscal year. Applicants under the Quick Fund~~s~~ programs may submit one (1) Quick Fund~~s~~ application per application deadline and shall receive funds under no more than one (1) Quick Fund~~s~~ grant each fiscal year. (4-6-05)()

203. APPLICATIONS.

01. Application Forms. Applications shall include a completed application form in the format provided by the Commission for the applicable program, ~~produced on eight and one-half inch by eleven inch (8½" x 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point.~~ Application forms may include questions requiring narrative answers and a proposed budget. Application forms shall not exceed the page limit for the program specified on the application form. The Commission may decline to consider pages in excess of the page limit. (4-6-05)()

02. Submission. Applications shall be ~~hand~~ delivered to the Commission or sent to the Commission by the United States mail or other courier or delivery service, ~~or submitted via the Commission's online grant application system. The Commission will not accept applications or supporting materials submitted by facsimile transmission or electronically.~~ The Commission will accept applications for a program for a period beginning one (1) month prior to the next application deadline for the program and concluding on the application deadline. (4-6-05)()

03. Ownership and Return of Applications. Upon submission, applications shall become the property of the Commission. The return of work samples shall be at the risk and expense of the applicant. The Commission may require pre-payment of packing and shipping costs for the return of work samples. (5-8-09)

04. Work Samples and Supporting Materials. Each application shall include the work samples and supporting materials specified in these rules for the applicable program. (4-6-05)

a. Work samples shall be of work that is no more than five (5) years old ~~(Traditional Arts apprenticeship and Folk and Traditional Arts fellowship applicants are exempt).~~ (5-8-09)()

b. Applicants shall not send original work samples or master copies of work samples. (4-6-05)

c. Requirements for work samples are defined in the program guidelines. (5-8-09)

05. Resumes. Resumes shall ~~be no longer than two (2) pages and~~ describe the applicant's professional

development as an artist or arts administrator. ~~Resumes must be produced on eight and one-half inch by eleven inch (8½" X 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point.~~ Resumes may contain academic training, publications, honors and awards, locations of exhibitions or performances, or a short personal biography concerning training in a traditional art. (4-6-05)()

06. Artist Statements. ~~Artist statements shall be no longer than one (1) page and must be produced on eight and one-half inch by eleven inch (8½" x 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point.~~ An artist statement should discuss the purpose of the work and provide the reader with a personal perspective of the artist concerning the work. (4-6-05)()

07. ~~Publication, Performance, and Production Information.~~ ~~Publication, performance, or production information shall be restricted to the applicant's resume.~~ (4-6-05)

08. Matching Contributions. At the request of the Commission, the applicant shall provide documentation of matching contributions for Commission review. Contributions of services must be uncompensated and, if the applicant is an organization, shall not include the services of the applicant's board members. In-kind contributions must be valued at the reasonable rate for the services or property provided to the applicant in the applicant's community. If cash contributions are raised through fund-raising activities or donations from individuals, private foundations, or private companies, the applicant must identify the source of the cash contribution and maintain documentation substantiating the source of the cash contribution. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

206. FINAL REPORTS.

Recipients must submit a final report to the Commission no later than thirty (30) days following completion of the project or the last day of the final fiscal year of the grant term, unless the recipient requests an extension in writing and the extension is approved by the Commission. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

301. QUICK FUNDS.

Quick Funds provides grants to support new or exemplary arts projects, activities, or professional development for individuals working in all disciplines and for the professional growth of arts administrators. Quick Funds grants are available to individuals for professional development and Quick Projects. (4-6-05)()

01. Quick Funds -- Professional Development. Quick Funds for professional development provides reimbursement to artists for gatherings where they will teach or learn from their peers and to arts administrators for attending a conference, seminar, workshop, or other form of career advancement training. The Commission will not accept Quick Funds for professional development applications: (4-6-05)()

a. For the same event or opportunity from more than one (1) member or staff of a single organization with a budget over fifty thousand dollars (\$50,000). (4-6-05)

b. For the same event or opportunity from more than two (2) members or staff of a single organization with a budget under fifty thousand dollars (\$50,000). (4-6-05)

c. For attendance at the same event or opportunity that was the subject of award to the applicant in the prior fiscal year. (5-8-09)

d. From an applicant who has received a Quick Funds grant in the same fiscal year. (4-6-05)()

02. Quick Funds -- Quick Projects. Quick Projects provides support for activities that allow an applicant to develop significant and specific projects or new works that will be shared with the public.

~~(4-6-05)~~()

03. Quick Fund\$ -- Evaluation Criteria. Quick Fund\$ grant applications for individuals are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the feasibility of the project or activity, and the opportunity for artistic growth from the activity or project. The Commission may give preference to applicants who have not previously received funds through a Commission program. ~~(5-8-09)~~()

04. Quick Fund\$ -- Matching Contributions. Applicants for a Quick Projects grants must provide cash contributions equaling one-third (1/3) of the requested funds. Applicants for professional development must provide cash contributions equaling the requested funds. ~~(4-6-05)~~()

05. Quick Fund\$ -- Application Requirements. Applicants for Quick Fund\$ for individuals shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. Artist statements are not required for writers or arts administrators. ~~(4-6-05)~~()

06. Quick Fund\$ -- Application Deadlines. Quick Fund\$ applications must be postmarked or *hand* delivered to the Commission on or before the second Monday of March, June, September, or December. ~~(3-29-10)~~()

302. FELLOWSHIPS.

Fellowships recognize the outstanding work and artistic excellence of Idaho artists. Fellowships are intended to reward dedication to a discipline, promote public awareness, and to advance an artist's career. (4-6-05)

01. Fellowships -- Evaluation Criteria. Fellowship applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the applicant's artistic excellence, and the professional history of the applicant. (5-8-09)

02. Fellowships -- Limitations on Award. ~~The Commission will not accept applications from recipients receiving a fellowship in the prior fiscal year~~ Fellowship recipients must skip one (1) round in their discipline before reapplying. The Commission will not award more than three (3) fellowships to an artist. The Commission will not award a literature fellowship to applicants who have previously received a Writer in Residence award from the Commission. ~~(4-6-05)~~()

03. Fellowships -- Coordination ~~with~~ the Writer in Residence Program. Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. ~~(4-6-05)~~()

04. Fellowships -- Discipline Rotation. Fellowship awards are awarded to artists based upon discipline in a ~~three (3)~~ two (2) year rotation. Beginning with fiscal year 2005~~21~~, the rotation cycle is as follows: ~~(4-6-05)~~()

a. Year one (1) -- ~~literature;~~ craft, design and visual arts; folk and traditional arts. ~~(4-6-05)~~()

b. Year two (2) -- ~~craft, design and visual arts; and~~ literature; media and performing arts. ~~(5-8-09)~~()

~~c. Year three (3) -- media and performing arts.~~ ~~(5-8-09)~~

05. Fellowships -- Application Requirements. The Commission reviews applications for fellowships anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for fellowships shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. (4-6-05)

06. Fellowships -- Application Deadline. Fellowship applications must be postmarked or *hand* delivered to the Commission on or before the last business day of January. ~~(4-6-05)~~()

303. WRITER IN RESIDENCE.

The Writer in Residence appointment is the highest recognition of achievements in literature and the largest financial award accorded an Idaho writer by the state of Idaho. (4-6-05)

01. Writer in Residence -- Recipient Obligations. Recipients of a Writer in Residence appointment shall give ~~twelve (12)~~ eight (8) public readings, craft talks, or workshops throughout the state of Idaho during the appointment term. ~~Eight (8)~~ six (6) public readings, craft talks, or workshops shall be in communities with populations of no more than fifty thousand (50,000) residents. The public readings, craft talks, or workshops shall be conducted at regular intervals, approved by the Commission, during the term of the appointment. In its discretion, the Commission may require the recipient to give up to ~~three (3)~~ two (2) additional readings at special public events. (5-8-09)()

02. Writer in Residence -- Limitations on Award. The Commission will not recommend applicants with two (2) prior Writer in Residence appointments for subsequent appointment to Writer in Residence. The Commission will not award a Literature Fellowship to applicants who have previously received a Writer in Residence appointment. (4-6-05)

03. Writer in Residence -- Evaluation Criteria. Writer in Residence applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the literary excellence of the applicant, the applicant's past work and contributions to literature and an oral reading by the applicant. (5-8-09)

04. Writer in Residence -- Coordination with Fellowships. Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. (4-6-05)

05. Writer in Residence -- Award and Term. The Commission submits recommended appointments under the Writer in Residence program to the Governor. Appointments to Writer in Residence are made in the sole discretion of the Governor. The term of a Writer in Residence appointment is ~~three (3)~~ two (2) years beginning with the date of appointment specified in the announcement of award by the Commission. (4-6-05)()

06. Writer in Residence -- Application Requirements. The Commission reviews applications for the Writer in Residence program anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for the Writer in Residence program shall submit an application form, a resume, manuscripts, and an audio ~~tape or compact disk~~ recording of the applicant's oral reading. (4-6-05)()

07. Writer in Residence -- Application Deadline. Writer in Residence applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. (4-6-05)()

304. TRADITIONAL ARTS APPRENTICESHIPS.

The Traditional Arts Apprenticeships program supports a learning partnership between a master and an apprentice. (4-6-05)

01. Traditional Arts Apprenticeships - Funding Limitations and Requirements. (4-6-05)

a. The traditional art practiced by the master ~~must~~ should represent a shared cultural tradition of the apprentice. (4-6-05)()

b. Applicants younger than eighteen (18) years of age are allowed to apply as apprentices when their artistic traditions are typically passed down to persons under eighteen (18). (5-8-09)

c. A master may train more than one (1) apprentice where the traditional art is traditionally practiced by a group or taught or passed down in a group. (4-6-05)

d. A master may reside outside of Idaho if the ethnic or cultural group represented by the traditional

art extends beyond Idaho. (4-6-05)

02. Traditional Arts Apprenticeships -- Evaluation Criteria. Traditional arts apprenticeship applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the community recognition accorded to the master, the benefit to the applicant and the public from the apprenticeship, and the feasibility of the applicant's proposal. The Commission may give preference to traditional art forms with few practicing artists. (5-8-09)

03. Traditional Arts Apprenticeships -- Length of Apprenticeships. The length of an apprenticeship under the traditional arts apprenticeships program shall not exceed ten (10) months. The Commission, in its sole discretion, may grant an extension of the length of an apprenticeship upon receipt of a written request submitted prior to the expiration of the length of the originally awarded apprenticeship. (4-6-05)

04. Traditional Arts Apprenticeships -- Work Plan. The master and the applicant shall cooperatively develop a work plan for the apprenticeship. The work plan shall include the meeting schedule, meeting locations, and the materials needed for the apprenticeship. The work plan should consider the availability of seasonal materials and the preparation of materials prior to use. (4-6-05)

05. Traditional Arts Apprenticeships -- Instructional Fees. Traditional arts apprenticeships awards shall include payment of an hourly instructional fee at a rate determined by the Commission to the master for the number of instructional hours approved by the Commission. (4-6-05)

06. Traditional Arts Apprenticeships -- Application Requirements. Applications for traditional arts apprenticeships award shall submit: an application form; a work plan; two (2) to three (3) letters of support from community members *that, which* describe the applicant's artistic contributions to the community and how the applicant's traditional art relates to the master's and the applicant's shared artistic heritage; and work samples appropriate to the applicant and the master. Applicants are also encouraged to submit the master's resume. (5-8-09) ()

07. Traditional Arts Apprenticeships -- Application Deadlines. Traditional arts apprenticeship applications must be postmarked or *hand* delivered to the Commission on or before the last business day of January. (3-29-10) ()

305. -- 399. (RESERVED)

400. PROGRAMS SUPPORTING ORGANIZATIONS.

The Commission administers the programs for organizations set forth in Sections 401 through 405 of these rules. (4-6-05)

01. Organizations -- Significant Changes. Applicants that experience significant changes in the applicant's staff, programming, or finances following submission of an application and prior to a program award must notify the Commission of the changes in writing. (4-6-05)

02. Organizations -- General Evaluation Criteria. The Commission reviews application materials for support of public programs in the arts provided by organizations using the following general criteria. These general criteria are encompassed within the point totals and specific evaluation criteria of each program. Applicants should include substantiation for each of the criteria in the application. (5-8-09)

a. Community support through fund-raising or other community financial support. (4-6-05)

b. Accuracy of the budget submitted with the application materials. (5-8-09)

c. Involvement of Idaho artists and arts organizations. Use of out-of-state resources is permitted if the applicant demonstrates that the resources are not available with Idaho or if their use supplements the resources available locally. (4-6-05)

d. The applicant's commitment to make the arts accessible to all members of the public. Accessibility

includes the ability of persons with special needs, ethnic groups, occupational groups, senior citizens, and young audiences to access the arts. Accessibility also includes consideration of the location and ease of use of facilities, content of the activities, and the planning process. Applicants must include documentation showing that the applicant invited pertinent cultural and community groups to participate in the applicant's planning process. (4-6-05)

e. The applicant's commitment to fairly compensating artists. (4-6-05)

f. The applicant's use of admission fees, where applicable, to provide financial support for the subject of the application. The Commission encourages the use of admission fees. (4-6-05)

03. Acquisition or Commission of Works. Applicants seeking funding for the acquisition of works of art or the commission of new works of art must meet the following criteria. The applicant must: (4-6-05)

a. Maintain a permanent exhibition facility that is open to the public. (4-6-05)

b. Demonstrate excellent management and security practices. (4-6-05)

c. Maintain an ongoing exhibition program or a permanent collection. (4-6-05)

04. College and University Applicants. The Commission will accept applications from college and university applicants if the applicant presents and markets its arts activities to the general public and the subject of the application is supplementary to the applicant's regular curriculum. College and university applicants are not eligible for Public Programs in the Arts grants or for Cultural Facilities and Public Art grants. ~~College and university applicants must provide matching contributions from non-public funds.~~ The Commission will not classify organizations affiliated with a college or university, operating as a separate tax-exempt organization and applying as the separate tax-exempt organization, as a college or university applicant. (5-8-09)()

401. QUICK FUNDS FOR ORGANIZATIONS.

Quick Fund grants provide timely assistance to arts organizations for professional advice or training, arts projects, and arts programs. (3-29-10)()

01. Quick Funds -- Quick Projects. Quick Projects provides funds for arts projects and programs of organizations that do not receive support through the Public Programs in the Arts or Entry Track Grant program. (3-29-10)()

02. Quick Funds -- ~~Training and Advice~~ Technical Assistance. ~~Training and advice~~ Quick Funds for technical assistance awards provide funds for management consultancies and artistic consultancies. Management consultancies address aspects of the organization's operations such as fund-raising, technology, marketing, public relations, organizational development, audience development, long-range planning, program development, accessibility planning, and board or financial management. Artistic consultancies address aspects of the organization's arts projects such as voice instruction, lighting design, exhibition design, or conservation studies. (4-6-05)()

03. Quick Funds -- Evaluation Criteria. Quick Fund grant applications from organizations are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the access and involvement of the community in the project or activity. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. The Commission may give preference to applicants whose annual operating budget is less than fifty thousand dollars (\$50,000) and to applicants who have not previously received funds from a Commission program. (5-8-09)()

04. Quick Funds -- Matching Contributions. The applicant must provide matching contributions equaling the requested funds. (4-6-05)()

05. Quick Funds -- Application Requirements. Applicants for Quick Funds for organizations shall submit an application form; the resumes of key consultants, artists, or personnel; for applicants other than schools, a list of the current board of directors of the organization ~~with affiliation and contact information~~; an Internal Revenue

Service tax determination letter, if applicable; and work samples reflecting prior projects or as applicable to the project or activity that is the subject of the application. Applicants should also submit ~~no more than five (5)~~ documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. (4-6-05)()

06. Quick Funds -- Application Deadlines. Quick Funds applications must be postmarked or ~~hand~~ delivered to the Commission on or before the second Monday of March, June, September, or December. (5-8-09)()

402. CULTURAL FACILITIES AND PUBLIC ART GRANTS.

Cultural Facilities and Public Art Grants encourage local, public, and private support for feasibility studies, renovation or construction of performance, exhibition or artist spaces, purchases of equipment and fixtures for such spaces, and public arts projects. Cultural Facilities and Public Art Grants are awarded for single-phase projects that can be completed in one (1) year and multi-phase projects where all of the individual phases of the project can be completed over a period that does not exceed five (5) years. The award of funding by the Commission does not guarantee funding for more than one (1) phase of a multi-phase project. (5-8-09)

01. Cultural Facilities and Public Art Grants -- Funding Limitations and Requirements. (5-8-09)

a. Applicants who have received Cultural Facilities and Public Art Grants for five (5) consecutive fiscal years are ineligible for Cultural Facilities and Public Art Grants for one (1) fiscal year. (5-8-09)

b. College and university applicants are ineligible for Cultural Facilities and Public Art Grants. (5-8-09)

c. The Commission will not award a Cultural Facilities and Public Art Grant for the purchase or maintenance of motorized or non-motorized vehicles. (5-8-09)

d. Construction and renovation using a Cultural Facilities and Public Art Grant must comply with all federal, state, and local laws including laws governing the access of persons with disabilities, facilities on the National Register of Historic Places, and building, zoning, and other codes. (5-8-09)

e. The Commission will not fund construction and renovation using a Cultural Facilities and Public Art Grant unless the primary purpose of the construction or renovation is for the presentation of the arts to the public. (5-8-09)

02. Cultural Facilities and Public Art Grants -- Feasibility Studies. Applicants for renovation or construction of facilities must submit a feasibility study. The extent of the feasibility study must match the significance of the project. The feasibility study must contain an analysis of the vision and planning for the project. (5-8-09)

03. Cultural Facilities and Public Art Grants -- Evaluation Criteria. Cultural Facilities and Public Art Grant applications from organizations are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the planning for the project and the applicant's management capacity. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. (5-8-09)

04. Cultural Facilities and Public Art Grants -- Matching Contributions. The applicant must provide cash contributions equaling the requested funds. (5-8-09)

05. Cultural Facilities and Public Art Grants -- Application Requirements. (5-8-09)

a. Single-phase Projects. Applicants for single-phase Cultural Facilities and Public Art Grants shall submit an application form; the resumes of key consultants, artists, or personnel; a list of the current board of directors of the organization ~~with affiliation and contact information~~; an Internal Revenue Service tax determination letter, if applicable; three (3) current competitive bids for the project; a feasibility study, if applicable; a timeline for the project; blueprints and design drawings, if applicable; an historic significance report, if applicable; evidence of

property or facility ownership or lease of the property or facility if the project involves construction or the installation of equipment or fixtures; and proof of adequate liability and fire insurance for the project. Applicants should also submit ~~no more than five (5)~~ documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. Applicants are also encouraged to submit a list of in-kind contributions to the project. (5-8-09)()

b. Multi-phase Projects. Applicants for multi-phase Cultural Facilities and Public Art Grants shall submit the items required of applicants for single-phase Cultural Facilities and Public Art Grants. The feasibility study shall have been completed in the prior three (3) years. In addition, applicants for multi-phase Cultural Facilities and Public Art Grants shall submit a progress report based upon the original project plan containing an explanation of any delays or changes to the plan, and the original specifications for bids with a comparative summary sheet. Applicants for public art projects are not required to submit the original specifications for bids for the project. (5-8-09)

06. Cultural Facilities and Public Art Grants -- Application Deadline. Cultural Facilities and Public Art Grant applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. (5-8-09)()

403. PUBLIC PROGRAMS IN THE ARTS GRANTS.

Public Programs in the Arts Grants are designed to support public arts programs of Idaho's established arts organizations by assisting the organizations in program planning and business stabilization. Public Programs in the Arts Grants are awarded as multi-year grants. (5-8-09)

01. Public Programs in the Arts -- Funding Limitations and Requirements. (5-8-09)

a. The primary mission of the applicant must be the production, presentation, or support of the arts. (4-6-05)

b. College and university applicants are ineligible for Public Programs in the Arts Grants. (5-8-09)

c. Applicants must have been operating as a tax-exempt organization for thirty-six (36) months prior to the application deadline. (5-8-09)

d. The responsibility for the applicant's operation must rest with a paid staff person. (5-8-09)

e. Applicants must compensate artists according to the prevailing community standard for the artist's discipline. (5-8-09)

f. ~~Applicants who have failed to reduce or have increased a budget deficit for three (3) consecutive years must demonstrate that the applicant has ended the applicant's most recent fiscal year with a balanced budget and that the applicant has made a significant effort to reduce the deficit during the applicant's current fiscal year.~~ Applicants with a budget deficit ~~must also~~ **should** provide a deficit-elimination ~~schedule~~ **plan** approved by the applicant's governing body and acceptable to the Commission. (4-6-05)()

02. Public Programs in the Arts Grants -- Evaluation Criteria. Public Programs in the Arts Grant applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the community involvement and access to the proposed use of grant funds. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. ~~Applicants of similar size and resources are reviewed based upon their gross annual operating budget, staff, longevity, location in a rural or urban county, and the criteria in the program guidelines.~~ (5-8-09)()

03. Public Programs in the Arts Grants -- Matching Contributions. Applicants must provide matching contributions equal to the grant funds. (5-8-09)

04. Public Programs in the Arts Grants -- Discipline Three (3) Year Rotation. Multi-year Public Programs in the Arts Grants are awarded to applicants ~~based upon the discipline primarily supported by the applicant~~

in a three (3) year rotation, ~~beginning with 2005, the rotation cycle is as follows:~~ (5-8-09)()

~~a. Year one (1) literature; (4-6-05)~~

~~b. Year two (2) craft, design, and visual arts; and (5-8-09)~~

~~c. Year three (3) media and performing arts. (5-8-09)~~

05. Public Programs in the Arts Grants -- Application Requirements. (5-8-09)

a. Initial Application. Applicants for Public Programs in the Arts Grants shall submit an application form. Upon receipt of the award notification and agreement, applicants shall submit an executed award agreement to accept the grant. (5-8-09)

b. Interim Applications. Recipients of multi-year Public Programs in the Arts Grants shall submit an interim application form on or before the last business day in January of the first and second years of the grant. (5-8-09)

06. Public Programs in the Arts Grants -- Application Deadlines. Public Programs in the Arts Grant applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. (5-8-09)()

404. ENTRY TRACK GRANTS.

Entry Track Grants are the entry point for Idaho arts organizations that are eligible for Public Programs in the Arts funding and are new to the Idaho Commission on the Arts programs. Entry Track Grants also support the public programs in the arts delivered by university-based arts organizations. (5-8-09)

01. Entry Track Grants -- Funding Limitations and Requirements. Current applicants for or recipients of a Public Programs in the Arts Grant are ineligible for an Entry Track Grant. Current recipients of a Quick Fund ~~s~~ Quick Projects Grant for Organizations are ineligible for an Entry Track Grant. (5-8-09)()

02. Entry Track Grants -- Evaluation Criteria. Entry Track Grant applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the applicant's management capacity, and the access and involvement of the community in the project. The Commission may include the general criteria set forth in Subsection 400.03 of these rules within the criteria published in the program guidelines. (5-8-09)

03. Entry Track Grants -- Grant Amounts and Matching Contributions. Recipients of Entry Track Grants must provide cash contributions equaling the grant. (5-8-09)

04. Entry Track Grants -- Application Requirements. Applicants for Entry Track Grants shall submit an application form; the resumes of key consultants and personnel; a list of the current board of directors of the organization ~~with affiliation and contact information~~; an Internal Revenue Service tax determination letter, if applicable; work samples reflecting prior and on-going projects; and a list of potential and confirmed programming events for the applicant's current programming season. Applicants should also submit ~~no more than five (5)~~ documents supporting the application such as brochures or letters from community partners. Applicants are encouraged to submit a list of in-kind contributions. (5-8-09)()

05. Entry Track Grants -- Application Deadline. Entry Track Grant applications must be postmarked or ~~hand~~ delivered to the Commission on or before the last business day of January. (5-8-09)()

405. TUMBLEWORDS.

TumbleWords is a cooperative effort among twelve (12) western states to bring writers into communities where residents may be underexposed to creative writing because of geographical or economic circumstances. Under the TumbleWords program, writers of fiction, nonfiction, and poetry give readings and hold writing workshops. (4-6-05)

01. TumbleWords -- Eligibility and Funding Requirements. Applicants for the TumbleWords

program must satisfy the following: (4-6-05)

a. A unit of local, county, or tribal government, or an organization determined to be tax-exempt by the Internal Revenue Service must serve as the applicant by controlling the use of funding from the TumbleWords program, signing the application and accepting all legal and contractual obligations of the program. (4-6-05)

b. The application must demonstrate an interest within the community in increasing access to literature. Community interest shall include sufficient volunteers or staff to meet the requirements of the TumbleWords program in the community. (4-6-05)

c. The applicant must provide or secure a facility for readings, workshops, and other public activities that complies with all federal, state, and local laws and regulations. (4-6-05)

02. TumbleWords -- Funding and Community Match. TumbleWords program awards are subject to funds availability including the availability of funding from the Western States Arts Federation. The applicant must provide matching contributions equaling requested funds. (4-6-05)

03. TumbleWords -- Application Requirements. Applicants for the TumbleWords program shall submit an application form; the resumes of key writers or personnel; a list of the current board of directors of the organization ~~with affiliation and contact information~~; and an Internal Revenue Service tax determination letter, if applicable. (4-6-05)()

04. TumbleWords -- Application Deadlines. The Commission accepts TumbleWords program applications during its regular business hours. (4-6-05)

406. -- 499. (RESERVED)

500. SUPPORT FOR ARTS EDUCATION.

The Commission administers the programs supporting arts education set forth in Sections 501 through 503 of these rules. The following programs are available to individuals: Arts in Education Directory of Teaching Artists, Quick Fund\$§ for professional development for educators, and Quick Fund\$§ Teacher Incentive Grants. The following programs are available to organizations: Quick Projects for education, Arts Education Project Grants. The Commission will not issue a grant to organizations under a program for individuals or issue a grant to an individual under a program for organizations. (5-8-09)()

501. ARTS IN EDUCATION DIRECTORY OF TEACHING ARTISTS.

The Arts in Education Directory of Teaching Artists is an online listing of artists who share their unique art forms in schools and communities. The Arts in Education Directory of Teaching Artists does not provide funding to recipients. Recipients may set fees, schedules, and activities in collaboration with schools. (5-8-09)

01. Arts in Education Directory of Teaching Artists -- Evaluation Criteria. Applicants for the Arts in Education Directory of Teaching Artists are evaluated based upon the applicant's artistic skills, communication skills, and the applicant's proposals for arts in education. (5-8-09)

02. Arts in Education Directory of Teaching Artists -- Application Requirements. Applicants for the Arts in Education Directory of Teaching Artists shall submit an application form, a resume, an artist statement, work samples appropriate to the applicant's discipline, three (3) letters of recommendation from persons familiar with the applicant's artistic ability and communication skills, and support materials such as letters of acceptance, brochures, articles, workshop information, and resumes of master artists under which the applicant has studied. (5-8-09)

03. Arts in Education Directory of Teaching Artists -- Application Deadlines. Arts Education Directory of Teaching Artists applications must be postmarked or *hand* delivered to the Commission on or before the last business day of June in even numbered years. (5-8-09)()

502. QUICK FUND\$§ FOR ARTS EDUCATION.

Quick Fund\$§ grants support professional development or short-term projects that enliven or improve arts learning as

an integral part of the education of Idaho's youth. Quick Fund§s grants are available for professional development for educators, teacher incentive grants, and Quick Projects for education. (4-6-05)()

01. Quick Fund§s -- Professional Development for Educators. Quick Fund§s for professional development for educators provides support to teachers, educators, and artists in the Arts in Education Directory of Teaching Artists to attend conferences, seminars, workshops, or summer educational events that provide training in arts curricula, arts teaching, arts assessment, arts integration, or related topics. (5-8-09)()

02. Quick Fund§s -- Teacher Incentive Grants. Teacher incentive grants provide support to teachers for activities that enliven or improve arts learning in the classroom. (4-6-05)()

03. Quick Fund§s -- Quick Projects for Education. Quick Projects for education provides support for short-term projects that enliven or improve arts learning as an integral part of the education of Idaho's youth. (4-6-05)()

04. Quick Fund§s -- Evaluation Criteria. (4-6-05)()

a. Professional Development for Educators and Teacher Incentive Grants. Quick Fund§s applications for professional development for education and teacher incentive grants are available to individuals who are educators or an artist in the Arts in Education Directory of Teaching Artists. Applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the feasibility of the project and the opportunity for artistic growth from the project. (5-8-09)()

b. Quick Projects for Education. Quick Fund§s applications for Quick Projects for education are available to: arts organizations that do not receive Public Programs in the Arts Grants or Entry Track Grants in the same fiscal year; schools; units of local, county, or tribal government, and organizations determined to be tax-exempt by the Internal Revenue Service *that, which* provide arts services for the general public. Applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic quality of the applicant, the management capacity of the applicant, and community involvement and access to the project. The Commission may give preference to applicants who have not previously received funds through a Commission program. (5-8-09)()

05. Quick Fund§s -- Matching Contributions. Applicants for a professional development for educators Quick Fund§s grant must provide matching contributions equaling the requested funds. Applicants for a teacher incentive Quick Fund§s grant must provide matching contributions equaling one-third (1/3) of the requested funds. Applicants for a Quick Projects for education grant must provide matching contributions equaling the requested funds. College and university applicants shall not use in-kind contributions as matching funds. (4-6-05)()

06. Quick Fund§s -- Application Requirements. (4-6-05)()

a. Professional Development for Educators and Teacher Incentive Grants. Applicants for professional development for educators or a teacher incentive Quick Fund§s grant shall submit an application form, a resume, work samples appropriate to the applicant, and supporting materials such as letters of acceptance, brochures, articles, or workshop information. (4-6-05)()

b. Quick Projects for Education. Applicants for a Quick Projects for education grant shall submit an application form; resumes of key consultants, artists, or personnel; work samples reflecting prior projects or activities as applicable to the project or activity that is the subject of the application; and, no more than five (5) documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. Applicants eligible to use in-kind contributions must also submit a list of in-kind contributions used as matching contributions. All applicants are encouraged to submit a list of in-kind contributions to the project. (4-6-05)

07. Quick Fund§s -- Application Deadlines. Quick Fund§s applications for arts education must be postmarked or *hand* delivered to the Commission on or before the second Monday of March, June, September, or December. (5-8-09)()

503. ARTS EDUCATION PROJECT GRANTS.

Arts Education Project Grants support teaching and learning opportunities for children and youth, Pre-K through grade twelve (12). Applicants may apply for support for a specific project or program designed to: increase access to arts education for students; foster professional development for artists and educators; increase participation of community members in education; or address specific needs of youth through the arts. In-school projects must support ~~the Idaho Humanities Achievement S~~ academic standards published by in the State Board of Education arts- ~~In-school projects should~~ to enhance teacher practice and student learning in and through the arts, and strengthen long-term community partnerships and collaborations to affect systemic change in schools. Arts Education Project Grants also support out-of-school arts education activities for young people. This support is characterized by collaborations between arts organizations and other community organizations, especially social service agencies that nurture the development and creativity of youth. (5-8-09)()

01. Arts Education Project Grants -- Evaluation Criteria. Arts Education Project grant applications are evaluated on criteria published in the program guidelines. The review criteria may include, but are not limited to, the artistic and educational merit of the program or activity, project planning, the management capacity of the applicant, and community involvement and access to the project. (5-8-09)

02. Arts Education Project Grants -- Matching Contributions. Applicants must provide cash or in-kind matching contributions equaling the grant. (5-8-09)

03. Arts Education Project Grants -- Application Requirements. Applicants for Arts Education Project grants shall submit an application; resumes of key personnel; audio, visual, or published materials from the applicant or key partners; curriculum guides, or examples of past student work from the applicant or key partners that will help the Commission understand the artistic and professional quality of the program or activity; and work samples of artists, teaching artists, and the arts education programs of the central partners or contractors providing the services in the project. Work samples are not required for artists participating in the program who are in the Arts in Education Directory of Teaching Artists. If the applicant will use in-kind contributions, the applicant must also submit a list of in-kind contributions to the project. (5-8-09)

04. Arts Education Project Grants -- Application Deadlines. Arts Education Project grant applications must be postmarked or hand delivered to the Commission on or before the last business day in January. (5-8-09)()

504. -- 999. (RESERVED)

IDAPA 52 – IDAHO STATE LOTTERY COMMISSION

52.01.03 – RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

DOCKET NO. 52-0103-1801

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 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 Sections 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 effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-7408, 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 August 1, 2018 Idaho Administrative Bulletin, [Vol. 18-8, pages 185-191](#).

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

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

Dated this 24th day of September, 2018.

Jeffrey R. Anderson
Executive Director
Idaho State Lottery
1199 Shoreline Ln., Ste. 100
P. O. Box 6537
Boise, ID 83707-6537
Phone: (208) 334-2600

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-7408, 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 August 15, 2018.

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 Idaho Lottery is required to move to an automated balancing functionality between the Lottery, Intralot (its gaming system contractor) and the Multi-State Lottery Association (MUSL) and is moving to production that will allow for draw games to be balanced without human intervention. This is mission critical and will fundamentally allow the Lottery to no longer have to employ Draw Managers to audit and balance draws. After this system is functional, the current tasks that draw managers perform will be automatically completed through the MUSL Automated Reporting System (MARS). Other benefits include eliminating human error and reducing labor costs. Because of these improvements in balancing data, our IDAPA Rules as written will be obsolete to industry practice and standard in requiring a "Draw Manager". This rulemaking will conform Lottery administrative rules to meet the upcoming technical requirements and drawing procedure for draw games going forward.

Revisions are being made to IDAPA 52.01.03.204.07 to eliminate the "Drawing Manager" role from the online game drawing procedure because it will be obsolete to industry practice and standard, going forward.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature. The rulemaking is required by the Multi-State Lottery Association which governs and oversees drawings for draw games such as PowerBall™. There will no longer be a "draw manager" under procedures for conducting drawings for draw games in order to conform to industry practice and standard. There is nothing to negotiate.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2018.

DATED this 5th day of July 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 52-0103-1801

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

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

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

a. "Drawing." The procedure determined by the Director by which the Lottery selects the winning combination in accordance with the rules of the game. Drawings are open to the public. (4-4-13)

b. "On-line Game." (4-4-13)

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

ii. On-line terminal (OLT) instant ticket game having characteristics as defined in Paragraphs 202.02.a., 202.02.b., 202.02.d. and 202.02.i. of these rules. (4-4-13)

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

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

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

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

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

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

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

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

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

- 04. Sale of Tickets.** (3-26-08)
- a.** No person other than a retailer under a contract for the sale of tickets with the Lottery may sell on-line Lottery tickets, except that nothing in this section will be construed to prevent a person who may lawfully purchase tickets from making a gift of Lottery tickets to another. (3-26-08)
- b.** Tickets may not be sold at a location other than the address listed on the retailer's contract with the Lottery. (3-26-08)
- c.** Nothing in this section shall be construed to prohibit the Director from designating certain of its agents and employees to sell Lottery tickets directly to the public. (3-26-08)
- 05. On-Line Games Criteria.** (3-26-08)
- a.** The base price of an on-line ticket will not be less than fifty cents (\$.50), except to the extent of discounts authorized by the Commission. (3-26-08)
- b.** The price for a ticket in any particular on-line game will be set out in the game rules adopted by the Commission for that game. No person may sell a ticket at a price other than that established in accordance with these rules. On the average, the total of all prizes available to be won in an on-line game shall not be less than forty-five percent (45%) of the on-line game's projected revenue. (3-26-08)
- c.** The manner and frequency of drawings may vary with the type of on-line game as defined in Subparagraph 204.02.b.i. of these rules. (4-4-13)
- d.** The times, locations, and drawing procedures will be determined by the Director. (3-26-08)
- e.** OLT instant ticket game as defined in Subparagraph 204.02.b.ii. of these rules will operate with a finite number of tickets per game and a predetermined and guaranteed prize structure approved by the Director. (4-4-13)
- f.** A ticket bearer entitled to a prize must submit the winning ticket as specified by the Director. The winning ticket must be validated by the Lottery or an on-line retailer through use of the validation number and any other means specified by the Director. (3-26-08)
- 06. Payment of Prizes.** (3-26-08)
- a.** To claim an on-line game prize of less than six hundred dollars (\$600) the claimant may present the winning on-line ticket to any on-line retailer, or to the Boise Lottery office: (3-26-08)
- i.** If the claim is presented to an on-line retailer, the on-line retailer must validate the claim and, if determined to be a winning ticket, pay the amount due the claimant. If the on-line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)
- ii.** If the claim is presented to the Boise Lottery office, the claimant may be required to complete a claim form and submit it with the winning ticket, either by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)
- b.** To claim an on-line prize of six hundred dollars (\$600) or more, the claimant must obtain and complete a claim form and submit it with the winning ticket to the Boise Lottery office by mail or in person. Prizes of six hundred dollars (\$600) or more can be paid only from the Boise Lottery office. Upon determination that the ticket

is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. The amount due will be calculated according to the rules adopted for the particular on-line game. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

c. All prizes must be claimed within one hundred eighty (180) days from the drawing in which the prize was won. If the final day of the one hundred eighty (180) day period falls on a Saturday, Sunday or a state holiday, the claim period will be extended to the end of the next business day. Any prize not claimed within the specified period will be forfeited and placed into the State Lottery account. (3-26-08)

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

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

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

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

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

e. The equipment used to determine the winning combination will not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The drawing results, including sales, number of winners and numbers drawn, are will be audited and reviewed after each drawing to assure proper operation and lack of tampering or fraud. ~~Drawings will not be held until all pre-inspection checks are completed. No prizes will be paid until after all post inspection checks have been completed.~~ (4-4-13)()

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Hold funds generated from the sale of on-line tickets in trust for the Lottery. At a time specified by the Lottery, the retailer must pay these funds to the Lottery plus the monthly communications charge specified above

- in Paragraph 204.09.b. of this rule, less: (3-26-08)
- i. Prizes paid; (3-26-08)
 - ii. Any credit; and (3-26-08)
 - iii. The retailer discount. (3-26-08)
- d.** Locate the OLT within the retailer’s premises at a point-of-sale location approved by the Lottery. The retailer is prohibited from moving an OLT unless the retailer follows the procedures established by the Director, including reimbursing the State Lottery for any telephone or internet or similar charges associated with the change of OLT location if the retailer requested the change. (3-26-08)
- e.** Provide dedicated AC power to within approximately five (5) feet of the terminal. Dedicated AC power means that there is no other equipment on the line that is to be used for the on-line terminal. The retailer is responsible for all costs associated with providing dedicated AC power. The Lottery will provide a schematic of outlet requirements to the retailer’s electrical contractor. (3-26-08)
- f.** Sell all Lottery games, including but not limited to instant game tickets offered by the Lottery. The retailer agrees to continue the sale of instant tickets from all cash registers or other points of purchase. (3-26-08)
- g.** Conduct the sale of on-line tickets during all hours and days that the retailer’s business is open and the on-line system is functioning. The retailer must post the hours that redemption of winning tickets may take place if these hours are different from the retailer’s normal business hours. The retailer must monitor ticket supply levels and give timely notice when any item is in short supply. (3-26-08)
- h.** Post winning numbers prominently where tickets are sold as soon as possible following the drawing. (3-26-08)
- i.** Provide secure storage for OLT supplies and a secure area for the OLT. (3-26-08)
- j.** Exercise due diligence in the operation of the OLT and immediately notify the Lottery and the central computer facility of any telephone line, internet, radio, or OLT malfunction, such as the issuance of invalid on-line Lottery ticket, inability to sell or redeem an on-line ticket, and non-issuance of an on-line ticket. The retailer is prohibited from performing mechanical or electrical maintenance on the OLT. (3-26-08)
- k.** Replace ribbons and on-line or instant ticket stock and clear paper jams as required for the OLT per the instructions provided by the Lottery. (3-26-08)
- l.** Pay, without reimbursement, all electricity charges in connection with the operation of OLT. (3-26-08)
- 10. Payment of Prizes by On-Line Retailers.** (3-26-08)
- a.** An on-line retailer must pay to the ticket bearer on-line games prizes of less than six hundred dollars (\$600) for any validated claims presented to that on-line retailer. These prizes must be paid during all normal business hours of the on-line retailer, unless redemption hours differ from normal business hours that have been posted pursuant to Paragraph 204.09.g. of this rule, provided, that the on-line system is operational and claims can be validated. (3-26-08)
- b.** An on-line retailer may pay prizes in cash or by business check, certified check, money order, or any combination thereof. An on-line retailer that pays a prize with a check that is dishonored may be subject to suspension or termination of its contract. (3-26-08)
- 11. Retailer Settlement.** (3-26-08)
- a.** The Director may require on-line retailers to establish an account for deposit of monies derived

from on-line games with a financial institution that has the capability of electronic funds transfer (EFT). (3-26-08)

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

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

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

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

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

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

15. Discharge of State Lottery Upon Payment. The state of Idaho, its agents, officers, employees and representatives, the Lottery, its Director, agents, officers, employees and representatives shall be discharged of all liability upon payment of a prize or any one (1) installment thereof to the holder of any winning Lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on a winning Lottery ticket and the information on the claim form, the Lottery may rely on the claim form after the ticket for which it has been filed has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The Lottery's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes will be final and binding upon all participants in the Lottery unless otherwise provided by law or these rules. If a question arises concerning the winning ticket, a claim form, the payment, or the awarding of any prize, the Lottery may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. (3-26-08)

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