

Dear Senators LODGE, Vick, Bock, and
Representatives WILLS, Luker, Burgoyne:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Board of Correction - Correctional Industries:
IDAPA 06.01.02 - Rules of Correctional Industries (New Chapter) (Docket No. 06-0102-1401).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 06/23/2014. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 07/22/2014.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

FROM: Principal Legislative Research Analyst - Brooke Brouman

DATE: June 04, 2014

SUBJECT: Board of Correction - Correctional Industries

IDAPA 06.01.02 - Rules of Correctional Industries (New Chapter) (Docket No. 06-0102-1401)

The Board of Correction submits Notice of Proclamation of Rulemaking at IDAPA 06.01.02, which constitutes a new chapter that was prompted by the passage of Senate Bill No. 1374a during the 2014 Legislative Session. Senate Bill No. 1374a establishes new Idaho Code Section 20-413A that permits the Board of Correction to enter into contracts with private agricultural employers for the use of inmate labor in the production, harvesting and processing of perishable agricultural food products. Section 20-413A, Idaho Code, also requires the board to establish, by rule, factors to be considered prior to entering such contracts and factors to be considered in dispersing inmate earnings. The purpose of the new rule chapter is to comply with this statutory mandate.

We make the following two observations with regard to the new rule chapter, both of which appear on page 47 of the rule docket:

- (1) In Section 013.01.a., reference to Section 20-413, Idaho Code, appears erroneous; and
- (2) In Section 013.01.b., the permissive language relating to the use of funds to offset certain costs, which is denoted by the word "may," is not consistent with the language in governing Section 20-413A, Idaho Code, which mandates that the deductions be made.

We spoke with Andrea Sprengel, Services Manager for Idaho Correctional Industries, who made two changes to the new chapter as follows:

- (1) In Section 013.01.a., reference to Section 20-413, Idaho Code, was changed to Section 20-416, Idaho Code; and
- (2) In Section 013.01.b., the word "may" was changed to "shall," which is consistent with the governing statute.

The effective date of this new rule chapter is July 4, 2014. The State Board of Correction is exempt from the provisions of Section 67-5220, Idaho Code, regarding negotiated rulemaking.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

The Board of Correction states that there is no fiscal impact on the general fund as a result of this rule-making.

The new chapter, with the stated changes, appears to be in compliance with Section 20-413A, Idaho Code.

cc: Board of Correction - Correctional Industries
Andrea Sprengel

IDAPA 06 - BOARD OF CORRECTION

06.01.02 - RULES OF CORRECTIONAL INDUSTRIES

DOCKET NO. 06-0102-1401 (NEW CHAPTER)

NOTICE OF PROCLAMATION OF RULEMAKING

EFFECTIVE DATE: Pursuant to Section 20-212(1), Idaho Code, this rule shall become final and effective 30 days after the date of publication of this proclamation in the Administrative Bulletin by the Office of the Administrative Rules Coordinator. The effective date of this rule is July 4, 2014.

AUTHORITY: In compliance with Section 20-212, Idaho Code, notice is hereby given that this agency has initiated rulemaking procedures. Section 20-413A, Idaho Code, (see 2014 senate bill S1374 effective July 1, 2014) requires the Idaho State Board of Correction to promulgate rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute.

PUBLIC HEARING SCHEDULE: Pursuant to Section 20-212(1), Idaho Code, the Idaho State Board of Correction is exempt from the provisions of Section 67-5222, Idaho Code, regarding public participation in rulemaking.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rulemaking is to comply with the legislative intent of Senate Bill 1374 (2014) which directs the Board of Correction to promulgate rules to provide terms and conditions for the operation of the agricultural inmate work program by Correctional Industries. These rules provide for establishing contracts with private agricultural employers while ensuring that non-inmate worker displacement does not occur, provides for inmate safety and security, and develops a system for deductions from inmate worker's wages.

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

There is no fee or charge being imposed or increased through this rulemaking.

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:

There is no fiscal impact on general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 20-212(1), Idaho Code, the Idaho State Board of Correction is exempt from the provisions of Section 67-5220(2), Idaho Code, regarding negotiated rulemaking.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking proclamation, contact Andrea Sprengel, Services Manager, at (208) 577-5561.

DATED this 9th day of May 2014.

Andrea Sprengel
Services Manager
Idaho Correctional Industries
1301 N. Orchard St. Suite 110
Boise, ID 83706
Ph: (208)577-5561 / Fax: (208)577-5560

THE FOLLOWING IS THE TEXT OF THE PROCLAMATION FOR DOCKET NO. 06-0102-1401

IDAPA 06
TITLE 01
CHAPTER 02

06.01.02 - RULES OF CORRECTIONAL INDUSTRIES

000. LEGAL AUTHORITY.

Pursuant to Sections 20-212, 20-408 and 20-413A, Idaho Code, the Board of Correction is authorized to promulgate and adopt rules necessary for Correctional Industries to enter into contracts with private agricultural employers for inmate labor. (7-4-14)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 06.01.02, "Rules of Correctional Industries," IDAPA 06, Title 01, Chapter 02. (7-4-14)

02. Scope. These rules are established to provide factors to be considered by Correctional Industries when entering into a contract with private agricultural employers for inmate labor to prevent non-inmate labor displacement, ensure inmate safety, identify security risks and needs, and disperse inmate earnings. (7-4-14)

002. WRITTEN INTERPRETATIONS.

Pursuant to Section 20-212(1), Idaho Code, the Board is exempt from all provisions of Chapter 52, Title 67, Idaho Code, except as specifically noted therein, so there are no written interpretations of these rules. (7-4-14)

003. ADMINISTRATIVE APPEALS.

Pursuant to Section 20-212(1), Idaho Code, the Board is exempt from all provisions of Chapter 52, Title 67, Idaho Code, except as specifically noted therein, so there are no provisions for administrative appeal. (7-4-14)

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter. (7-4-14)

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

01. Street Addresses and Business Hours. (7-4-14)

a. The Board of Correction administrative office is located at 1299 N. Orchard St., Suite 110, Boise, ID 83706-2266. Business hours are 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. (7-4-14)

b. Correctional Industries administrative office is located at 1301 N. Orchard St., Suite 110, Boise, ID 83706. Business hours are 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. (7-4-14)

02. Mailing Addresses. (7-4-14)

a. Mail regarding the Board of Correction rules shall be directed to the Board of Correction, Office of the Director, 1299 N. Orchard St., Suite 110, Boise, ID 83706-2266. (7-4-14)

b. Mail regarding Correctional Industries shall be sent to Correctional Industries, 1301 N. Orchard St., Suite 110, Boise, ID 83706. (7-4-14)

- 03. Telephone Numbers.** (7-4-14)
- a.** The telephone number of the Board of Correction is (208) 658-2000. (7-4-14)
 - b.** The telephone number for Correctional Industries is (208) 577-5555. (7-4-14)
- 04. Facsimile Numbers.** (7-4-14)
- a.** The fax number for the Board of Correction is (208) 327-7404. (7-4-14)
 - b.** The fax number for Correctional Industries is (208) 577-5569. (7-4-14)
- 05. Internet Websites Addresses.** (7-4-14)
- a.** The Internet website for the Board is http://www.idoc.idaho.gov/content/about_us/leadership/board_of_correction. (7-4-14)
 - b.** The Internet website for Correctional Industries is <http://ci.idaho.gov/>. (7-4-14)
- 006. PUBLIC RECORDS ACT COMPLIANCE.**
The rules of Correctional Industries are subject to, and in compliance with, the Idaho Public Records Act. The rules are maintained by Correctional Industries, and shall be open to the public for inspection and copying at all reasonable times. (7-4-14)
- 007. -- 009. (RESERVED)**
- 010. DEFINITIONS.**
- 01. Inmate.** An individual in the physical custody of the Board. (7-4-14)
 - 02. Private Agricultural Employer.** As defined in 44-1601(2), Idaho Code, any individual engaged in farm labor contracting for an agricultural operation owned or operated exclusively by such individual or a member of such individual's immediate family, if such activities are performed only for such operation and exclusively by such individual, but without regard to whether such individual has incorporated or otherwise organized for business purposes. (7-4-14)
 - 03. Work Site.** Any place where inmates may be found when assigned to a work project. (7-4-14)
- 011. ABBREVIATIONS.**
- 01. IDOC.** Idaho Department of Correction. (7-4-14)
 - 02. IDOL.** Idaho Department of Labor. (7-4-14)
- 012. CONTRACTS WITH PRIVATE AGRICULTURAL EMPLOYERS.**
Correctional Industries shall make all reasonable efforts to ensure non-inmate workers are not displaced when entering into a contract with a private agricultural employer for inmate labor. (7-4-14)
- 01. Wage Determination.** On an annual basis, Correctional Industries shall request a prevailing wage determination letter from the Idaho Department of Labor (IDOL) for the prevailing wage of the region for Standard Occupational Classification codes related to the agricultural work to be performed. (7-4-14)
 - 02. Prior to Contract.** Prior to entering into any contract with a private agricultural employer for inmate labor, Correctional Industries shall conduct a work site evaluation with assistance from Idaho Department of Correction staff to identify inmate safety and security risks and needs. (7-4-14)
 - 03. Contract Requirements.** Contracts with a private agricultural employer will include the

following:

(7-4-14)

a. At a minimum, the hourly rate per inmate paid to Correctional Industries by the private agricultural employer for inmate labor will be set at the prevailing wage provided by IDOL for that region, or state minimum wage, whichever is higher. The hourly rate per inmate will also account for any other costs the private agricultural employer would be required by law to pay for non-inmate workers even if not required by law to pay for inmate workers, for example workers compensation insurance premiums. (7-4-14)

b. The security and safety provisions identified during the work site evaluation and the responsibilities of each party. Security and supervision of the inmates will be provided at the work site by Idaho Department of Correction (IDOC) correctional officers. (7-4-14)

c. A statement certifying that the private agricultural employer was unable to employ a sufficient number of non-inmate workers to complete the job as described in the contract. (7-4-14)

013. INMATE COMPENSATION.

01. Correctional Industries Betterment Account. The moneys received from the private agricultural employer for inmate labor shall be deposited into the Correctional Industries Betterment Account pursuant to Section 20-416, Idaho Code. The funds deposited will be dispersed between Correctional Industries and the IDOC to cover costs of the agricultural inmate labor program and contribute to the Idaho Victim's Compensation Fund. (7-4-14)

a. The funds dispersed to Correctional Industries will also be used in accordance with Section 20-413, Idaho Code. (7-4-14)

b. The funds dispersed to IDOC may also be used to offset the costs incarceration, supplement education opportunities to inmates, provide resources for reentry to the community, or any other use identified by the director as a means to reduce recidivism. (7-4-14)

02. Inmate Trust Account. All remaining funds will be deposited into the inmate's trust account. Upon deposit, deductions for court-ordered financial obligations, including child support and restitution, will be made by IDOC. Any other deductions by IDOC will be made according to IDOC policy. (7-4-14)

014. -- 999. (RESERVED)