

Dear Senators LODGE, Broadsword & Werk, and  
Representatives BLOCK, Nielsen & Henbest:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Board of Pharmacy:

IDAPA 27.01.01 - Rules of the Idaho State Board of Pharmacy (Docket No. 27-0101-0809).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-27-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-24-08.

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

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

**FROM:** Research & Legislation Staff - Paige Alan Parker

**DATE:** October 8, 2008

**SUBJECT:** Board of Pharmacy - IDAPA 27.01.01 - Rules of the Idaho State Board of Pharmacy (Docket No. 27-0101-0809 (Proposed Fee))

The Board of Pharmacy submits Docket No. 27-0101-0809 (hereinafter “proposed fee rule”), amending the Board’s rules found at IDAPA 27.01.01. According to the Board, the proposed fee rule is authorized pursuant to sections 37-2715 and 54-1717, Idaho Code.

Chapter 27, title 37, Idaho Code is the Uniform Controlled Substances Act. Section 37-2715, Idaho Code, permits the Board to promulgate rules relating to the dispensing of controlled substances within Idaho. Sections 54-1701 to 54-1726, 54-1728 to 54-1739, 9-1701 and 9-1702, Idaho Code, are the components of the Idaho Pharmacy Act. Section 54-1717, Idaho Code, provides general rulemaking authority for the Board of Pharmacy under that Act. Section 54-1720(5)(a)2, Idaho Code, requires the Board to determine annual license fees, not to exceed \$250. The Board does not have specific authority to charge fees for criminal history checks under the Idaho Wholesale Drug Distribution Act, sections 54-1751 through 54-1759, Idaho Code, although such authority is strongly implied.

According to the Board, the existing wholesale distributor licensing fee of \$100 is insufficient to cover the costs charged to the Board by law enforcement agencies to conduct the criminal background checks required pursuant to section 54-1753(5), Idaho Code.

According to the Board, a license fee increase of \$30 is imposed on wholesale drug distributors by the proposed fee rule. The Board states that there is no anticipated impact to the general fund greater than \$10,000 during the fiscal year as a result of the proposed fee rule. According to the Board, negotiated rulemaking was not conducted because of the simple nature

of the rulemaking. The Board states that public hearing(s) will be scheduled if requested in writing by 25 persons, a political subdivision, or an agency, not later than October 15, 2008. All written comments must be delivered to the Board on or before October 22, 2008.

### **ANALYSIS**

The only rule change contained in the proposed fee rule is an increase from \$100 to \$130 for wholesaler (distributor) license fees. Section 404.07.

### **SUMMARY**

The Department's proposed fee rule change does not have any specific authority, although such authority may be implied pursuant to sections 54-1720(5)(a)2 and 54-1753, Idaho Code.

cc: Idaho State Board of Pharmacy  
Mark D. Johnston

## **IDAPA 27 - BOARD OF PHARMACY**

### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

#### **DOCKET NO. 27-0101-0809 (FEE RULE)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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 Legislature in 2007 enacted the Idaho Wholesale Drug Distribution Act, Sections 54-1751 through 54-1759, Idaho Code, which went into effect on July 1, 2007. Pursuant to Sections 54-1753(2)(g), Idaho Code, each applicant for licensing by the Board as a wholesale distributor of prescription drugs must submit certain information to the Board regarding the applicant's designated representative, including the fingerprints of that person. Pursuant to Section 54-1753(5), Idaho Code, the Board is required to submit the designated representative's fingerprints for a statewide criminal records check and for forwarding to the Federal Bureau of Investigation for a national criminal records check. The existing wholesale distributor licensing fee of \$100 is insufficient to cover the costs charged to the Board by law enforcement agencies to conduct such criminal background checks, so an increase in the license fee is needed to cover those costs. The current \$100 licensing fee has been in effect since December 17, 1994.

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

The proposed rulemaking amends IDAPA 27.01.01.404.07 to increase the annual license fee for whole distributors from \$100 to \$130.

**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 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 13th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0809**

**404. DUE JUNE 30, ANNUALLY -- TABLE.**

- |   |                          |
|---|--------------------------|
| <b>01. Pharmacist License.</b>  | (12-7-94)                |
| <b>a.</b> Active: ninety dollars (\$90).  | (3-13-02)                |
| <b>b.</b> Inactive: fifty dollars (\$50).   | (3-13-02)                |
| <b>02. Pharmacy.</b>  | (6-1-94)                 |
| <b>a.</b> Pharmacy License: one hundred dollars (\$100).  | (12-7-94)                |
| <b>b.</b> Parenteral Admixture License: one hundred dollars (\$100).                                | (12-7-94)                |
| <b>03. Out-of-State Mail Service.</b>   | (7-1-93)                 |
| <b>a.</b> Pharmacy, initial license: five hundred dollars (\$500).                                  | (12-7-94)                |
| <b>b.</b> Renewal license: two hundred fifty dollars (\$250).                                       | (12-7-94)                |
| <b>04. Clinics and Nursing Homes.</b> Thirty-five dollars (\$35).                                   | (3-13-02)                |
| <b>05. Non-Pharmacy.</b>  | (11-1-93)                |
| <b>a.</b> "A": sixty dollars (\$60).  | (3-13-02)                |
| <b>b.</b> "B": twenty-five dollars (\$25).  | (3-13-02)                |
| <b>c.</b> "V" (Vending machines): ten dollars (\$10).   | (3-13-02)                |
| <b>d.</b> "DME": fifty dollars (\$50).  | (7-1-98)                 |
| <b>06. Hospitals Without Pharmacy.</b> Thirty-five dollars (\$35).                                  | (3-13-02)                |
| <b>07. Wholesaler (Distributor).</b> One hundred <u>thirty</u> dollars (\$10 <u>30</u> ).           | <del>(12-7-94)</del> ( ) |
| <b>08. Controlled Substance for Wholesalers and Distributors.</b> One hundred dollars (\$100).      | (3-13-02)                |
| <b>09. Researcher, Analytical Lab.</b> Forty dollars (\$40).  | (3-13-02)                |
| <b>10. Retail Veterinary Drug Outlet - Retail or Retail/Wholesale.</b> One hundred dollars (\$100). | (3-13-02)                |
| <b>11. Veterinary Drug Technician.</b> Thirty-five dollars (\$35).                                  | (12-7-94)                |
| <b>12. Pharmacy Technician.</b> Thirty-five dollars (\$35).   | (3-13-02)                |