

Dear Senators GOEDDE, Mortimer, Malepeai, and  
Representatives NONINI, Shirley, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
State Board and State Department of Education:

IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity (Docket No. 08-0202-1101).

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 09/01/2011. 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 09/30/2011.

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 334-4845, or send a written request to the address or FAX  
number indicated on the memorandum enclosed.



Jeff Youtz  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Education Committee and the House Education Committee

**FROM:** Principal Legal Analyst - Eric Milstead

**DATE:** August 15, 2011

**SUBJECT:** State Board and State Department of Education Rule

IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity (Docket No. 08-0202-1101)

The state Department of Education submits notice of proposed rulemaking at IDAPA 08.02.02 - Rules Governing Uniformity. The proposed rule reflects the adoption by reference to revisions to Standards for Idaho School Buses and Operations (SISBO) manual. The Department notes that changes to the SISBO manual include a number of changes stemming from the National Congress on School Transportation held in May of 2010. We note the following:

- The Department's Notice of Rulemaking provides a descriptive summary of a number of revisions to the rule including "changes to the school bus construction standards, changes to a driver's qualifications, changes to school transportation operations at the local level, changes to reimbursements, and changes have also been made in the student transportation matrix..." We note that the changes referred to appear on the state Department of Education's website under a web link entitled "Proposed Rule Making." The proposed changes to the rule are found there and, while there is a revision to "Incorporation by Reference" in Rule Section 004.02 relating to the "Incorporation by Reference", that incorporation refers only to the SISBO. There are two additional documents (or links to documents) found on the Department's website under the "Proposed Rule Making," including a revised "Reimbursement and Non-Reimbursement" matrix; and a "School Bus Withdrawal" document. Neither of those two appear to be part of or otherwise included in the SISBO.
- The agency states that this rulemaking is authorized pursuant to Section 33-1511(2), Idaho Code. We note, however, that code section appears to be specifically limited to standards relating to the construction of school buses. The statute states that the state board shall "adopt....minimum standards for the construction of school buses, the basis of which standards shall be those incorporated in the latest report of the Nation Conference on School Transportation..." The proposed rulemaking includes many changes, as described above, that could not be considered as standards for the construction of school buses and consequently, appear to be outside the specific statutory language. {STAFF NOTE: The agency explained that although the statute is limited in scope, previous proposed rulemaking regarding busing and related transportation issues have been made under the authority conveyed by this statute. In light of the specific text found in Section 33-1511(2), Idaho Code, however, it is difficult to say that all portions of the current proposed rulemaking are authorized by this statute.}

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

cc: State Board and State Department of Education  
Tom Luna, Superintendent  
Brad Jensen, Director of Transportation

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.02 - RULES GOVERNING UNIFORMITY**

### **DOCKET NO. 08-0202-1101**

#### **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 Section 33-1511(2), 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 17, 2011.

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:

In May of 2010 the National Congress on School Transportation (National Standards) enacted changes affecting Idaho's school transportation program. Significant discussion related to school transportation in Idaho continues following operations and funding changes enacted during the 2010 legislative session. Recent changes enacted at the 2010 National Standards call for a response by the State Department of Education's Division of School Transportation. Consequently, the Department engaged in rulemaking related to school transportation in Idaho. A summary of the changes to the Standards for Idaho School Buses and Operations (SISBO) manual, which is incorporated by reference, include changes to the school bus construction standards, changes to a driver's qualifications, changes to school transportation operations at the local level, changes to reimbursements, and changes have also been made in the student transportation matrix to reflect the changes made in the manual.

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

There is no imposed or increased fee associated with these changes to the SISBO manual.

**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

**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: These changes result in no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because Idaho has a Student Transportation Steering Committee of transportation representatives from all regions of Idaho. Changes were vetted by the Student Transportation Steering Committee and forwarded to Negotiated Rulemaking for approval.

**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:

Section 33-1511(2), Idaho Code, allows the State Department of Education to "adopt, publish and distribute, and from time to time as need therefore arises amend, minimum standards for the construction of school buses, the basis of which standards shall be those incorporated in the latest report of the National Conference on School Transportation, which report shall be filed with the Idaho State Police." Due to the manual's length and the fact that changes are regularly required, incorporation by reference is a practical method of making alterations. The SISBO manual can be found on the State Department of Education's website at: <http://www.sde.idaho.gov/site/transportation/>.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brad Jensen, Director of Transportation, at the address listed below or email him at [kbjensen@sde.idaho.edu](mailto:kbjensen@sde.idaho.edu).

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 24, 2011.

DATED this 8th day of July, 2011.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0027  
208-332-6800 phone - 208-334-2228 fax

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 08-0202-1101**

**004. INCORPORATION BY REFERENCE.**

The State Board of Education adopts and incorporates by reference into its rules: (5-8-09)

**01. Idaho Standards for the Initial Certification of Professional School Personnel as approved on November 17, 2010.** Copies of this document can be found on the Office of the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-7-11)

**02. Standards for Idaho School Buses and Operations as approved on ~~November 7, 2008~~ June 23, 2011.** The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise Idaho, 83702 and can also be accessed electronically at <http://www.sde.idaho.gov/site/transportation/>. (~~4-7-11~~)( )

**03. Operating Procedures for Idaho Public Driver Education Programs as approved on November 17, 2010.** The Operating Procedures for Idaho Public Driver Education Programs are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702 and can also be accessed electronically at [http://www.sde.idaho.gov/site/driver\\_edu/public\\_docs/Public%20Driver%20Education.pdf](http://www.sde.idaho.gov/site/driver_edu/public_docs/Public%20Driver%20Education.pdf). (4-7-11)