

Dear Senators HEIDER, Nuxoll, Bock, and  
Representatives WOOD, Perry, Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Department of Health and Welfare:

IDAPA 16.05.06 - Rules Pertaining To Criminal History & Background Checks - Application &  
Fingerprint Requirements (Docket No. 16-0506-1302);

IDAPA 16.05.06 - Rules Pertaining To Criminal History & Background Checks (Fee Rule) - Fee  
Assessed for Missed Appointments (Docket No. 16-0506-1303).

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 10/16/2013. 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 11/13/2013.

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 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 Health & Welfare Committee and the House Health & Welfare Committee  
**FROM:** Senior Legislative Research Analyst - Ryan Bush  
**DATE:** September 26, 2013  
**SUBJECT:** Department of Health and Welfare - Criminal History and Background Checks

IDAPA 16.05.06 - Rules Pertaining To Criminal History & Background Checks - Application & Fingerprint Requirements (Docket No. 16-0506-1302)

IDAPA 16.05.06 - Rules Pertaining To Criminal History & Background Checks (Fee Rule) - Fee Assessed for Missed Appointments (Docket No. 16-0506-1303)

**(1) 16.05.06 - Rules Pertaining To Criminal History & Background Checks - Application & Fingerprint Requirements (Docket No. 16-0506-1302)**

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.05.06 - Rules Pertaining To Criminal History & Background Checks - Application & Fingerprint Requirements. The Department states that this rulemaking provides clarification of the criminal history and background check application and fingerprint submission requirements and process. In addition, this rulemaking accomplishes the following:

- (1) Provides an appeal process for individuals whose records are disputed;
- (2) Updates the list of disqualifying crimes to include sexual exploitation by a medical care provider and updates the reasons for unconditional and conditional denials;
- (3) Clarifies when clearance may be revoked and actions for noncompliance;
- (4) Clarifies the changes that employers must report to the Department; and
- (5) Provides that a fee may be assessed for a missed fingerprint appointment.

The Department states that negotiated rulemaking was not conducted because it was not feasible. The Department states that it did ask employers that use the Department's website for criminal history and background checks for their input. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Department in Sections 56-202(b), 56-1004 and 56-1004A, Idaho Code.

**(2) 16.05.06 - Rules Pertaining To Criminal History & Background Checks (Fee Rule) - Fee Assessed for Missed Appointments (Docket No. 16-0506-1303)**

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.05.06 - Rules Pertaining To Criminal History & Background Checks (Fee Rule) - Fee Assessed for Missed Appointments. The Department states that this rulemaking provides for a fee of twenty dollars (\$20) to be assessed for missed fingerprint appointments by those required by the Department to have a criminal history and background check. This rulemaking also provides that no fee shall be paid if an appointment is canceled with twenty-four hours notice, provides for a waiver of the fee and provides that completion of the criminal history and background check may be delayed pending receipt of the fee.

The Department states that negotiated rulemaking was not conducted because applicants are required to cover the cost of a criminal history and background check. The Department states that it did ask employers for input on whether a fee would help alleviate missed appointments. The Department estimates that it will collect \$26,000 in receipts for this fee and that this will result in a reduction in state general funds of \$12,700 and federal funds of \$13,300.

The proposed rule appears to be within the statutory authority granted to the Department in Sections 56-202(b), 56-1004, 56-1004A and 56-1007, Idaho Code.

cc: Department of Health and Welfare - Criminal History and Background Checks  
Tamara Prisock  
Fernando Castro

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1302

### 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 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, 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 18, 2013.

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:

These rule changes provide clarification of the criminal history and background check application and fingerprint submission requirements and process. Other changes include:

1. Provide an appeal process for individuals whose records are disputed;
2. Update the crime list for disqualifying crimes, and conditional and unconditional denials;
3. Clarify when a clearance may be revoked and actions for noncompliance with rules; and
4. Clarify reporting changes to the Department for change in ownership, location, or name.

**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 fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact to any funds due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted nor feasible because these rule changes are to clarify current policies and to provide a process to appeal findings. The Department did survey employers that use the Department's website for criminal history and background checks for their input.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Fernando Castro, at (208) 332-7999.

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 25, 2013.

DATED this 1st day of August, 2013.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0506-1302

060. EMPLOYER REGISTRATION.

**01. Initial Registration.** Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed or accessed. (7-1-12)( )

**02. Change in Name or Ownership. When an agency or facility:** ( )

**a.** Is acquired by another entity, the new ownership must register as a new employer and provide contact information to obtain a new employer identification number and website access within thirty (30) calendar days of acquisition. ( )

**b.** Changes its name or location, the employer must provide the new name, location, and contact information to the Department within thirty (30) calendar days of the change. ( )

(BREAK IN CONTINUITY OF SECTIONS)

130. SUBMISSION OF APPLICATION.

An application for a criminal history and background check must be initiated ~~on the Department's website, submitted,~~ and received ~~by on~~ the Department's website before a criminal history and background check can be processed. The application is pending until the Department issues a clearance or denial, or the individual withdraws the application. *The applicant has two options for processing the application:* (7-1-12)( )

~~**01. On-Line Application Process.**—An individual may submit the application through the Criminal History Unit's website at <https://chu.dhw.idaho.gov>. Individuals who submit their application through the website may schedule a fingerprinting appointment at a Department location. At the fingerprinting appointment, the Department will print the application and notarize the individual's signature.~~ (7-1-12)

~~**02. Mail-in Application Process.** An individual may complete the application provided on the Department's website, print the application, have it notarized, and mail it to the Criminal History Unit with the signed fingerprint card and applicable fee. The application must be mailed to: Criminal History Unit, P. O. Drawer B, Lewiston, ID 83501.~~ (7-1-12)

131. -- 139. (RESERVED)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department *must* obtain fingerprints electronically at *one each* of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (7-1-12)( )

**01. Department Fingerprinting Locations.** A fingerprint appointment ~~may be~~ *is* scheduled at designated Department locations where the Department will collect the individual's fingerprints. *A fee may be assessed when an individual misses the scheduled appointment as provided in Section 051 of these rules. The #*Locations *for the closest Department fingerprint collection office where an individual may submit fingerprints* are listed on the Department's website, or you may contact the Criminal History Unit as described in Section 005 of these

rules.

~~(3-26-08)~~( )

**02. Submitting Fingerprints by Mail.** When An individual ~~may~~ elects to have fingerprints collected by a local law enforcement agency or by the applicant's employer, the Department's fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the completed notarized application and applicable fee to: ~~Criminal History Unit, P. O. Drawer B, Lewiston, ID 83507~~ the address indicated on the Department's website. The notarized application and fees must be received by the Department in the time frame required in Section 150 of these rules. (7-1-12)( )

**03. Submission of Reprints.** In the event that an individual's submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. ( )

**141. -- 149. (RESERVED)**

**150. TIME FRAME FOR SUBMITTING APPLICATION AND FINGERPRINTS.**

The completed notarized application and fingerprints must be received by the Department within twenty-one (21) days from the date of notarization whether submitted by mail or at a Department fingerprinting location.

(7-1-12)( )

**01. Availability to Provide Services.** The applicant: ( )

**a.** Is available to provide services on the day the application is signed and notarized, as long as the applicant has not disclosed any disqualifying crimes or relevant records. The applicant must provide the Department a copy of the signed and notarized application to validate the date of applicant's availability to provide services. ( )

**b.** is not Becomes unavailable to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been ~~rolled~~ collected within this time frame. (7-1-12)( )

**c.** Who submits a complete application and fingerprints by mail, and the application is deemed inadequate or incomplete for processing by the Department, is unavailable to provide services until the application is received by the Department completed and corrected. ( )

**02. Incomplete Application.** The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. (7-1-12)

**03. No Extension of Time Frame.** The Department will not extend the twenty-one (21) day time frame, unless the applicant or employer provides just cause. An applicant for employment or employer can not submit a new application for the same purpose, or repeatedly re-sign and re-notarize the original application. (7-1-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE CRIMINAL HISTORY AND BACKGROUND CHECK.**

An individual is available to provide services pending completion of the criminal history and background check as described in Subsections 170.01 and 170.02 of this rule. The individual must have submitted a signed notarized application and fingerprintings must be completed in the time frame described required in Section 150 of these rules, in order to provide services. (3-26-08)( )

**01. Employees of Providers, Contractors, Emergency Medical Services (EMS), or the Department.** An individual is available to provide services on a provisional basis at the discretion of the employer or EMS Bureau as long as no disqualifying crimes or relevant records are disclosed on the application. The employer

must review the application for any disqualifying crimes listed in Section 210 of these rules or other relevant records listed in Sections 230 and 240 of these rules. The employer ~~then~~ **must** determine whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department. (3-26-08)(    )

**02. Individuals Licensed or Certified by the Department.** Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services: (3-26-08)

- a. Adoption or foster care applicants and adults in the home; (3-26-08)
- b. Certification or licensure applicants; (3-26-08)
  - i. Certified family homes; (3-26-08)
  - ii. Licensed child care providers; (3-26-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.**

**01. Department Clearance.** A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual may print copies of the clearance. The employer must print out the clearance and maintain a copy readily available for inspection. (7-1-12)(    )

**02. Revocation of Department Clearance.** An individual's previously issued clearance may be revoked for the following: (    )

**a.** The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. (    )

**b.** The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. (    )

**191. -- 199. (RESERVED)**

**200. UNCONDITIONAL DENIAL.**

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

**01. Reasons for an Unconditional Denial.** Unconditional denials are issued for: (3-4-11)

- a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)
- b. A relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding; (7-1-12)
- c. A relevant record on the Nurse Aide Registry; ~~or~~ (7-1-12)(    )
- d.** A relevant record on either the state or federal sex offender registries; or (    )

~~d.e.~~ A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules. (7-1-12)

**02. Issuance of an Unconditional Denial.** The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

**03. Challenge of Department's Unconditional Denial.** An individual has ~~thirty~~ **twenty-eight (3028)** days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. ~~(3-4-11)~~ ( )

**a.** If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

**b.** If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

**04. No Exemption Review.** No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

**05. ~~Final Order Appeal of an Unconditional Denial.~~ Following a challenge of the Department's final order unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. The request to appeal an unconditional denial does not stay the action of the Department.** ~~(3-26-08)~~ ( )

**201. -- 209. (RESERVED)**

**210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.**

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

**01. Disqualifying Crimes.** The disqualifying crimes, described in Subsections 210.01.a. through 210.01.v. of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. (7-1-12)

**a.** Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)

**b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)

**c.** Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)

**d.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)

**e.** Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)

**f.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)

**g.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)



- h.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- i.** Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- j.** Manslaughter: (7-1-12)
  - i.** Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; (7-1-12)
  - ii.** Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; (7-1-12)
  - iii.** Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; (7-1-12)
- k.** Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; (7-1-12)
- l.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- m.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
- n.** Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- o.** Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- p.** Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- q.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- r.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
- s.** Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
- t.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
- u.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)
- v.** Any felony punishable by death or life imprisonment; or (3-26-08)
- w.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

**02. Disqualifying Five-Year Crimes.** The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~j~~<sup>i</sup>. of this rule, or any substantially conforming foreign criminal violation: ~~(7-1-12)~~( )

- a.** Any felony not described in Subsection 210.01, of this rule; (3-4-11)
- b.** Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)
- c.** Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)

- d. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)
  - e. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)
  - f. Misdemeanor public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; (7-1-12)
  - g. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (7-1-12)
  - h. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; ~~or~~ (7-1-12)( )
  - i. Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; or ( )
  - ji. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-29-10)
- 03. Underlying Facts and Circumstances.** The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)
- a. A withheld judgment; (3-26-08)
  - b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
  - c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
  - d. A sealed record. (3-26-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**230. RELEVANT RECORDS RESULTING IN A CONDITIONAL DENIAL.**

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on his record as described Subsections 230.01 and 230.02 of this rule. (3-26-08)

**01. Individuals Licensed or Certified by the Department or a Department Employee.** A conditional denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.f.d. of this rule: (3-4-11)( )

~~a. A plea, finding, or adjudication of guilt to any felony or misdemeanor, or any crime other than a traffic violation, that does not result in a suspension of the individual's driver's license; (3-26-08)~~

~~ba.~~ A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)

~~eb.~~ The Department determines there is a potential health and safety risk to vulnerable adults or children; (3-26-08)

~~dc.~~ The individual has falsified or omitted information on the application form; ~~or~~ (3-26-08)( )

~~e.~~ *The individual is on the Nurse Aide Registry with a negative finding; or* (3-4-11)

- ~~f.d.~~ The Department determines additional information is required. (3-26-08)
- 02. Employees of Providers or Contractors.** A conditional denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.02.~~eb.~~ of this rule. ~~(3-4-11)( )~~
- a.** A substantiated child protection complaint or a substantiated adult protection complaint; or ~~(3-26-08)( )~~
- ~~b.~~ ~~The individual is on the Nurse Aide Registry with a negative finding; or~~ ~~(3-4-11)~~
- ~~eb.~~ The Department determines additional information is required. (3-26-08)
- 03. Underlying Facts and Circumstances.** The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)
- a.** A withheld judgment; (3-26-08)
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d.** A sealed record. (3-26-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. CRIMINAL OR RELEVANT RECORD - ACTION PENDING.**

- 01. Notice of Inability to Proceed.** When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify him from receiving a clearance for the criminal history and background check, the Department may issue a notice of inability to proceed. (7-1-12)
- 02. Availability to Provide Services.** The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. Any previous clearance issued by the Department will be revoked as described in Section 190 of these rules. ~~(7-1-12)( )~~
- 03. Reconsideration of Action Pending.** In the case of an inability to proceed status, the applicant can submit documentation that the matter has been resolved to the Department for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. When the Department's reconsideration results in a clearance after review, any previously revoked clearance will be restored as described in Section 190 of these rules. ~~(7-1-12)( )~~

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS**

#### **DOCKET NO. 16-0506-1303 (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 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, 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 18, 2013.

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:

Each year, the Criminal History Unit (CHU) experiences a 22% rate of missed fingerprint appointments. The CHU has already taken measures to reduce the no-show rate by improving the scheduling system, educating employers and applicants, and implementing an e-mail reminder notification system. This rule change will provide for a fee to be assessed for missed fingerprint appointments by individuals who are required to have a Department criminal history and background check. The no-show fee is being proposed as a deterrent to that practice and to offset lost productivity due to missed appointments. These rule changes will help alleviate backlogs for fingerprint collection by reducing the need to reschedule and having more availability of appointment times.

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

The Department is adding a no-show fee of \$20 for missed fingerprint appointments.

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

The Department estimates that it will collect \$26,000 in receipts for this no-show fee. The receipts collected will be used to cover current expenditures and will offset federal and general fund spending. The estimated \$26,000 in receipts collected will be offset by a reduction in state general funds of \$12,700 and federal funds of \$13,300.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is required under Section 56-1004A, Idaho Code, to have applicants cover the cost of a criminal history check. The Department did survey employers that regularly use the CHU website about whether fees would help alleviate missed appointments and increase the availability of appointments to meet their needs.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Fernando Castro, at (208) 332-7999.

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 25, 2013.

DATED this 1st day of August, 2013.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

---

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0506-1303**

**051. NO-SHOW FEE FOR MISSED FINGERPRINT APPOINTMENT.**

**01. No-Show Fee.** The Department may assess a no-show fee of twenty dollars (\$20) to an applicant when the applicant misses a scheduled fingerprint appointment. In the event an applicant misses more than one (1) appointment, a no-show fee will be assessed for each missed appointment. ( )

**02. Cancellation of Appointment.** An applicant who cancels an appointment twenty-four (24) hours or more in advance, not including weekends and holidays, will not be assessed a no-show fee. ( )

**03. Waiver of Fee.** The Department may waive the assessed no-show fee for the following: ( )

**a.** Applicant declares financial hardship; or ( )

**b.** Applicant shows good cause or justifiable circumstances for missed fingerprint appointment. ( )

**04. Completion of Check.** The processing of a criminal history and background check may be delayed pending the receipt of the no-show fee. ( )

**052. -- 059. (RESERVED)**