

Dear Senators MCKENZIE, Davis, Stennett, and
Representatives LOERTSCHER, Batt, Smith:

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

IDAPA 34.06.01 - Rules Pertaining To The Rules Governing the Electronic Recording of Real
Property (Docket No. 34-0601-1301).

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 10/04/2013. 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 11/04/2013.

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 State Affairs Committee and the House State Affairs Committee

FROM: Principal Legislative Research Analyst - Eric Milstead

DATE: September 17, 2013

SUBJECT: Secretary of State

IDAPA 34.06.01 - Rules Pertaining To The Rules Governing the Electronic Recording of Real Property (Docket No. 34-0601-1301)

The Secretary of State submit notice of temporary and proposed rulemaking at IDAPA 34.06.01 -- Rules Governing the Electronic Recording of Real Property. This temporary and proposed rule is a new rule and, according to the agency, is designed to create uniformity in all of Idaho's real property recording agencies. The rule comports with provisions of the Electronic Recording Commission (Section 31-2905, Idaho Code) and the Uniform Real Property Recording Act as provided for in Title 31, Chapter 29, Idaho Code.

The new rule governs the filing, acceptance, indexing and searching of real property records in county recording offices pursuant to Title 31, Chapter 29, Idaho Code. The rule includes administrative provisions dealing with the rule's scope, interpretation, incorporation of standards by reference, office hours and compliance with the public records act, as well as more substantive sections providing definition of terms and governing electronic recording processing requirements (Rule Section 105), security requirements and agreements (Rule Section 106) and procedures (Rule Section 107).

The agency notes that negotiated rulemaking was not feasible because of the need for temporary rulemaking. The agency explains that the practices and procedures found in the rules have been in effect for many months but have not be recorded in rule. The agency also states that it did not have the financial resources to conduct negotiated rulemaking.

The effective date of the temporary rule was May 21, 2013.

The agency's temporary and proposed rule appears to be authroized pursuant to sections 67-903(9) and 67-5226(1), Idaho Code.

cc: Jeff Harvey, Secretary of State's Office

IDAPA 34 - SECRETARY OF STATE

34.06.01 - RULES GOVERNING THE ELECTRONIC RECORDING OF REAL PROPERTY

DOCKET NO. 34-0601-1301 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 21, 2013.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-903(9), 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 July 17, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In keeping with the mandated requirements of the Electronic Recording Commission, pursuant to Section 31-2905, Idaho Code, and in keeping with Title 31, Chapter 29, Idaho Code, "Uniform Real Property Recording Act," the commissioners seek to promulgate these rules in order to create uniformity in all of Idaho's real property recording agencies. This is a new set of rules. No changes are being made to existing rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The Uniform Real Property Recording Act, Title 31, Chapter 29, Idaho Code, requires that the Electronic Recording Commission adopt standards for electronic recording, to ensure uniformity within the state, and also requires that the standards be consistent with those adopted and used by other jurisdictions. Electronic recording is already accepted in 37 counties in Idaho. The Property Records Industry Association (PRIA) is the recognized national standard-setting body for electronic recording of real property documents. These proposed rules are based on and consistent with the most recent PRIA standards. The commissioners seek to promulgate these rules in order to create uniformity in all of Idaho's real property recording agencies, as well as consistency with the practices of jurisdictions outside of Idaho. Immediate promulgation of the standards as temporary rules will confer a benefit by making public the practices and procedures of those responsible for the recording of real property (the county clerks). Immediate promulgation will also provide the county clerks with a written set of standards that they can reference should questions or concerns arise regarding the nature or implementation of recording practices with regard to real property.

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(2), Idaho Code, formal negotiated rulemaking was not feasible due to the need for temporary rulemaking. The Electronic Recording Commission seeks to promulgate these rules in order to create uniformity in all of Idaho's real property recording agencies. The practices and procedures written into these rules have been in effect for many months but have not been codified. Additionally, the Commission did not have the funds necessary to affect a formal negotiated rulemaking process. The text of the rules formulated by the Commission was reviewed by all 44 county clerks. Representatives of the Idaho Association of Recorders and Clerks, appointed by the Idaho Clerks, and title company representatives from AmeriTitle and Alliance Title also participated in review of the rules.

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:

Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of these rules, and listed below. These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>.

1. PRIA Request Version 2.4.2, August 2007;
2. PRIA Response Version 2.4.2, August 2007;
3. Document Version 2.4.1, October 2007;
4. Notary Version 2.4.1, October 2007;
5. eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007; and
6. URPERA Enactment and eRecording Standards Implementation Guide, December 2005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

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 July 24, 2013.

DATED this 7th day of June, 2013.

Jeff Harvey
UCC Supervisor
Office of the Secretary of State
700 W. State St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Fax: (208) 334-2282

**THE FOLLOWING IS THE TEMPORARY RULE AND THE TEXT
OF THE PROPOSED RULE FOR DOCKET NO. 34-0601-1301**

**IDAPA 34
TITLE 06
CHAPTER 01**

34.06.01 - RULES GOVERNING THE ELECTRONIC RECORDING OF REAL PROPERTY

000. LEGAL AUTHORITY.

In accordance with Section 67-903(9), Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the Uniform Real Property Electronic Recording Act enacted as Title 31, Chapter 29, Idaho

Code. (5-21-13)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 34.06.01, "Rules Governing the Electronic Recording of Real Property," IDAPA 34, Title 06, Chapter 01. (5-21-13)T

02. Scope. These rules shall govern the filing, acceptance, indexing and searching of real property records in the county recording offices under Title 31, Chapter 29, Idaho Code. (5-21-13)T

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. (5-21-13)T

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the filing requirements. (5-21-13)T

004. INCORPORATION BY REFERENCE.

Data and document formats necessary for electronic recording are incorporated by reference. (5-21-13)T

01. PRIA Standards. Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of this rule, and listed below: (5-21-13)T

a. PRIA Request Version 2.4.2, August 2007; (5-21-13)T

b. PRIA Response Version 2.4.2, August 2007; (5-21-13)T

c. Document Version 2.4.1, October 2007; (5-21-13)T

d. Notary Version 2.4.1, October 2007; (5-21-13)T

e. eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007; (5-21-13)T

d. URPERA Enactment and eRecording Standards Implementation Guide, December 2005. (5-21-13)T

02. Standards Availability. These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>. (5-21-13)T

005. OFFICE HOURS -- CONTACT INFORMATION.

The Office of the Secretary of State is located in Boise, Idaho, in the Statehouse located at 700 West Jefferson. The Commercial Division is in the Basement at the West End of the Capitol and is open from 8 a.m. to 5 p.m. except Saturdays, Sundays and legal holidays. The mailing address is: Secretary of State's Office, P.O. Box 83720, Boise, Idaho 83720-0080. The telephone number is (208) 334-2300. The facsimile number is (208) 334- 2282. (5-21-13)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (5-21-13)T

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Delivery Agent. A party who has entered into an agreement with a Participating Recorder to

deliver an Electronic Document from a Submitter to a Participating Recorder and to return the recorded Electronic Document to the Submitter. (5-21-13)T

02. Document. The meaning shall be the same as provided in Section 31-2902, Idaho Code. (5-21-13)T

03. Electronic Document. The meaning shall be the same as provided in Section 31-2902, Idaho Code. (5-21-13)T

04. Electronic Document Delivery System. An automated system for the secure transmission of an Electronic Document between a Submitter and a Participating Recorder through the use of a Delivery Agent. (5-21-13)T

05. Electronic Recording. The delivery and return of an Electronic Document, using an Electronic Document Delivery System, for the purpose of recording that document with the county records. (5-21-13)T

06. Electronic Signature. The meaning shall be the same as provided in Section 31-2902, Idaho Code. (5-21-13)T

07. Participating Recorder. A county recorder who has elected to accept Electronic Documents for recording. (5-21-13)T

08. PDF (Portable Document Format). The file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or World Wide Web presentation. (5-21-13)T

09. Submitter. A party who requests that an Electronic Document be recorded. (5-21-13)T

10. TIFF (Tagged Image File Format). The variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels. (5-21-13)T

11. XML (Extensible Markup Language). An extensible document language for specifying document content. XML is not a predefined markup language but a metalanguage (a language for describing other languages) allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents. (5-21-13)T

011. -- 100. (RESERVED)

101. ELECTRONIC RECORDING MODELS. Electronic Documents shall conform to one of the following models: (5-21-13)T

01. Model 1. Model 1, which utilizes scanned ink-signed Documents, transmitted without XML indexing data; (5-21-13)T

02. Model 2. Model 2, which utilizes scanned ink-signed Documents or Documents that have been created and signed electronically, transmitted with XML indexing data; or (5-21-13)T

03. Model 3. Model 3, which utilizes Documents that have been created and signed electronically, transmitted with embedded XML indexing data. (5-21-13)T

102. TRANSMITTED FILES.

01. Technical Standards for Transmitted Files. The technical standards for document formatting and data fields for Electronic Recording are those in effect at the time of the Electronic Recording as prescribed by the

Property Records Industry Association (PRIA) in the PRIA eRecording XML Standard Version 2.4, which includes PRIA Request Version 2.4.2 (August 2007); PRIA Response Version 2.4.2 (August 2007); Document Version 2.4.1 (October 2007); and Notary Version 2.4.1 (October 2007). (5-21-13)T

02. Guide to Be Consulted for Reference. The PRIA eRecording XML Implementation Guide for Version 2.4.1, Revision 2 (March 2007) should be consulted for reference. (5-21-13)T

03. Storage Formats. Electronic Documents shall be transmitted and stored as either TIFF or PDF files, in accordance with the TIFF 6.0 specification, published by the International Organization for Standardization as ISO 12639:2004, Graphic technology - Prepress digital data exchange - Tag image file format for image technology (TIFF/IT), or the PDF 1.7 specification, published by the International Organization for Standardization as ISO 32000-1:2008, Document management - Portable document format - Part 1: PDF 1.7. (5-21-13)T

103. DATA FORMATS.

The data format for Electronic Recordings shall meet technical standards and data fields set forth by the Property Records Industry Association (PRIA) in the PRIA eRecording XML Standard Version 2.4, which includes PRIA Request Version 2.4.2 (August 2007); PRIA Response Version 2.4.2 (August 2007); Document Version 2.4.1 (October 2007); and Notary Version 2.4.1 (October 2007). The PRIA eRecording XML Implementation Guide for Version 2.4.1, Revision 2 (March 2007) should be consulted for reference. (5-21-13)T

104. PARTICIPATING RECORDER.

01. Documents Accepted. A Participating Recorder is only required to accept Electronic Documents containing Electronic Signatures or notarizations that the Participating Recorder has the technology to support. (5-21-13)T

02. Authentication. A Participating Recorder has no responsibility to authenticate Electronic Signatures or notarizations. (5-21-13)T

105. ELECTRONIC RECORDING PROCESSING REQUIREMENTS.

01. Notice Requirements. A Participating Recorder shall provide appropriate notification to the Delivery Agent of the confirmation or rejection of an Electronic Recording through the Electronic Document Delivery System. (5-21-13)T

a. A notice of confirmation shall identify and include recording information for the recorded Electronic Document. (5-21-13)T

b. A notice of rejection shall identify the rejected Electronic Document and include a brief explanation of the reason for rejection. (5-21-13)T

c. The Delivery Agent shall notify the Submitter of the confirmation or rejection of the Electronic Document. (5-21-13)T

d. The failure of a Submitter to receive actual notice of confirmation or rejection of a recording shall not affect the validity of the confirmation or rejection. (5-21-13)T

02. Contact Information. A Participating Recorder may contact a Submitter regarding an Electronic Document submitted for recording prior to sending a notice of confirmation or rejection. The Delivery Agent shall ensure that the Submitter includes telephone or email contact information with each Electronic Document submission. (5-21-13)T

03. Time of Receipt. A Participating Recorder shall enter the time of receipt of Electronic Documents in accordance with Section 31-2410, Idaho Code. (5-21-13)T

106. SECURITY REQUIREMENTS.

Procedures shall be implemented and maintained to ensure the security of the Electronic Document Delivery System,

including the authenticity and integrity of the Electronic Documents maintained by the Participating Recorder. (5-21-13)T

01. Secure Method. A Participating Recorder shall provide a secure method for accepting Documents through the Electronic Document Delivery System and for recording and maintaining Electronic Documents within the Participating Recorder's records. (5-21-13)T

02. Security Procedures. A Delivery Agent shall implement and maintain security procedures for all electronic transmissions and shall be responsible for maintaining the security of the systems within their offices. (5-21-13)T

03. System and Security Failures. Electronic Document Delivery Systems shall protect against system and security failures and, in addition, shall provide backup, disaster recovery and audit trail mechanisms. Delivery Agents shall provide audit trail information to Participating Recorders on request. (5-21-13)T

04. Unauthorized Party. Electronic Document Delivery Systems shall not permit any unauthorized party to modify, manipulate, insert or delete information, without detection, in Electronic Documents or in the public record maintained by the Participating Recorder. (5-21-13)T

05. Notification of Breach. If a breach in security is detected by the Participating Recorder, Delivery Agent or Submitter, the party discovering the breach shall notify the other parties immediately. All parties shall work cooperatively to take remedial action and to resolve any issues related to a breach. (5-21-13)T

107. AGREEMENT AND PROCEDURES.

01. Participation Agreement. The Delivery Agent and the Participating Recorder shall enter into an agreement specifying the requirements for Electronic Document recording with the county. At a minimum, the agreement shall address the following items: (5-21-13)T

- a. Accepted Electronic Recording models; (5-21-13)T
- b. Accepted Electronic Document types; (5-21-13)T
- c. Defined technical specifications for data formats, document formats, electronic transmissions and security; (5-21-13)T
- d. If used by the Participating Recorder, indexing fields required for each Electronic Document; (5-21-13)T
- e. Electronic Signature and notarization requirements; (5-21-13)T
- f. Payment options for recording fees and applicable taxes; (5-21-13)T
- g. Hours during which Electronic Documents will be accepted and processing schedules that affect order of acceptance; (5-21-13)T
- h. Electronic Document acceptance and rejection requirements and procedures; (5-21-13)T
- i. Responsibility of the Delivery Agent to review the qualifications of each potential Submitter and to approve the potential Submitter prior to granting access to the Electronic Document Delivery System; and (5-21-13)T
- j. Responsibility of the Delivery Agent to enter into an agreement with each approved Submitter, in which the Submitter agrees to submit Electronic Documents for recording in accordance with all applicable state statutes and rules and to maintain the security of the systems within the Submitter's offices. (5-21-13)T

02. Other Procedures and Requirements. A Participating Recorder may include in the agreement

other procedures and requirements needed in order to implement fully and Electronic Recording program.(5-21-13)T

03. Establishment and Posting of Procedures. A Participating Recorder shall establish procedures for Electronic Recording in the municipality and shall post the procedures in the recorder's office, on the municipality's Internet website, if available, and through the Electronic Document Delivery System, and shall make a copy of the procedures available on request. The procedures shall cover, at a minimum, the items listed above in this subsection. (5-21-13)T

108. -- 999. (RESERVED)