



I.R.C.P. 2.8. Unsworn Foreign Declarations

Idaho Rules of Civil Procedure Rule 2.8. Unsworn Foreign Declarations.

This rule constitutes Idaho's implementation of the Uniform Unsworn Foreign Declarations Act as modified herein.

(a) Definitions. In this rule:

(1) *"Boundaries of the United States"* means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) *"Law"* includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) *"Sign"* means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) *"Sworn declaration"* means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) *"Unsworn declaration"* means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Comment:

1. The District of Columbia is included in the definition of "boundaries of the United States" to eliminate any potential ambiguity.

2. The definition of "law" is drafted in an open-ended manner to give it the widest possible application. The term is not ordinarily defined in uniform acts but in this context it is important that judges applying the act be in no doubt about its breadth. The wording is taken from the definition contained in the Revised Model State Administrative Procedure Act.



3. A “record” includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

4. The definition of “sign” is broad enough to cover any writing containing a traditional signature and any record containing an electronic signature. It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

(b) Applicability. This rule applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This rule does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Comment:

In keeping with the limited scope of the rule, an unsworn declaration made within the geographical boundaries of the United States, even if the location is under the control of another sovereign, such as foreign embassies or consulates or federally recognized Indian lands, should not be deemed “outside the boundaries of the United States” for the purposes of this rule. The rule, so limited, meets the immediate needs addressed by the rule. Moreover, notaries and officials authorized to administer oaths are more readily available in the United States.

(c) Validity of Unsworn Declaration.

(1) Except as otherwise provided in subsection (2), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this rule has the same effect as a sworn declaration.

(2) This rule does not apply to:

(A) a deposition;

(B) an oath of office;

(C) an oath required to be given before a specified official other than a notary public;

(D) a declaration to be recorded pursuant to Idaho Code Section 55-805; or

(E) an oath required by Idaho Code Section 15-2-504.

Comment:

The use of unsworn declarations is not limited to litigation. Unsworn declarations would be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain contexts in which unsworn declarations should not be



used, and these contexts are listed in this section. Except as provided in section (c) of this rule, pursuant to this section, an unsworn declaration meeting the requirements of this rule may be used in a state proceeding or transaction whenever other state law authorizes the use of a sworn declaration. Thus, if other state law permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the requirements of this rule would also suffice. Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (1) of this section, an unsworn declaration meeting the requirements of this rule could serve as a substitute for an affirmation.

(d) Required Medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Comment:

Courts and agencies often restrict the medium in which pleadings, motions, and other documents may be filed. This section recognizes that such a restriction is binding on a person seeking to introduce a foreign unsworn declaration.

(e) [Form of Unsworn Declaration](#) [1]. An unsworn declaration under this rule must be in substantially the form found in Appendix B.

Comment:

Section (b) of this rule authorizes the use of unsworn declarations made outside the boundaries of the United States as defined in section (a)(1). The formal declaration in this section recites the areas defined as within the boundaries and does not rely on the definition in section (a)(1) because the person making the formal declaration might believe, and therefore declare that he or she is outside the boundaries of the United States even though at the time of the declaration the person making the declaration is in the Virgin Islands, Puerto Rico, or one of the other territories or insular possessions of the United States. The form of the declaration lessens the opportunity for mistake or fraud.

(f) Uniformity of Application and Construction. In applying and construing this rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have implemented the Uniform Foreign Declarations Act.

Comment:

This section recites the importance of uniformity among the adopting states when applying and construing the rule.

(g) Relation to Electronic Signatures in Global and National Commerce Act. This rule modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

This subsection responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

(Adopted March 1, 2016, effective July 1, 2016.)



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