

STATE OF IDAHO



OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR

The Idaho Rule Writer's Manual

A Guide for Drafting and Promulgating Administrative
Rules in the State of Idaho

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ADMINISTRATIVE RULES OF THE STATE OF IDAHO

“In practice rules and regulations have the same effect on people’s daily lives as does statutory law. Both have the ability to greatly affect an individual’s personal freedom and/or property. If an individual is denied the right to engage in a chosen profession or is forced to spend his personal income to comply with a government requirement, it makes little difference if the authority is a statute passed by the legislature or a regulation adopted by an administrative agency. The effect is the same.”

This statement by former Speaker of the Idaho House of Representatives and current U.S. Congressman Michael Simpson underscores the pervasiveness of administrative rules in our lives and the serious nature of rulemaking. Because of this, the rulemaking process in Idaho aims to involve all persons affected by state agency administrative rules and make transparent the regulatory process through which our statutory laws are implemented and the practice and procedure requirements of our governmental agencies are established.

The Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code), which governs rulemaking in Idaho, defines rulemaking as the process for the formulation, adoption, amendment, or repeal of a rule. This process may be driven by a number of different events but two of the most common are the enactment of a new or amended statute by our state Legislature or the adoption of new regulations by the federal government. Additionally, changes to a federal law, receipt of a petition to change or adopt a rule, a change in an agency’s procedural requirements, a court order or a simple review of existing rules can cause an agency to initiate a rulemaking and set the rule promulgation process in motion.

An agency affected by a statute or regulation may find that new administrative rules or revisions to existing rules are necessary to carry out statutory or regulatory provisions or other legal mandates. Through rulemaking the agency interpretes, prescribes, and implements statutory law, and clarifies, standardizes, or establishes its procedure or practice requirements. This is done under authority established by the Legislature through statute. This, then, is an agency’s ability to make “*law*” under powers granted by the Legislature through statute or directly by the Constitution. All rules promulgated within the authority conferred by statute, and in accordance with the Administrative Procedure Act (APA), have the full ***force and effect of law*** and must be regarded as such. However, even though administrative rules are given the force and effect of law, they do not rise to the level of statutory law. And, just as a law would be overturned by the courts, a rule is voidable if not promulgated in compliance with the procedural requirements of the APA, does not meet legislative intent, or exceeds or is outside the agency’s substantive rulemaking or statutory authority.

Idaho’s statutory definition of a “rule” has a slightly different meaning than that of the federal government and several other states. In Section 67-5201(19) of the Idaho Administrative Procedure Act, the concept is broadly defined, giving agencies latitude to decide what rules to include or exclude:

- (19) “Rule” means the whole or part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

- (a) *law or policy, or*
- (b) *the procedure or practice requirements of an agency. The term includes the amendment, repeal or suspension of an existing rule, but does not include:*
 - (i) *statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or*
 - (ii) *declaratory rulings issued pursuant to Section 67-5232, Idaho Code; or*
 - (iii) *intra-agency memoranda; or*
 - (iv) *any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.*

Agency rule writers must have a clear understanding of this statutory definition to determine what can and cannot be promulgated as a rule. The statutory definition is broad enough that making this determination can be difficult. In order for a rule to meet and not exceed the legislative intent of statutory language and to withstand legislative scrutiny or judicial review, the rule must fall within this definition. Differing interpretations of a statute or the ambiguity of a law's legislative intent add to the difficulty of writing a rule that will survive the precarious path from inception to final adoption.

The courts have also weighed in on rulemaking and in some cases have required agencies to put into rule what previously may have been enforced through an agency policy or guidance document. While these court decisions are generally limited in scope and affect only specific laws and rules, the courts have expanded the definition of rule in these cases to include more ambiguous regulatory practices that cannot be applied "generally" and appear to be at odds with the statutory definition. The concept of "general applicability" doesn't always work well with certain environmental or wildlife management laws, for instance, because a rule that may be needed in one area of the state or on a certain river within the state cannot be applied generally or uniformly throughout the state. The courts have been careful not to redefine the statutory definition and in these cases have provided a guideline for determining that when something walks and talks like a rule, it should be a rule even though it may fall short of the stricter statutory definition.

Five distinct rulemaking activities, outlined in the following pages, make up the rule promulgation* or rulemaking process in Idaho. A rulemaking does not always include all five of these activities; however, the rule writer must be aware of each and know the differences between them. These different activities follow a sequential order, with little or no variation allowed, that must be adhered to in order to promulgate a rule that is valid and enforceable and that complies with the rulemaking requirements outlined in the Idaho Administrative Procedure Act.

**Promulgation means to publicize or make public. As used in the context of Idaho rulemaking, promulgation means to make known to the public through the publication of the Administrative Bulletin and the Administrative Code all rulemaking documents that are required by law to be published and made public.*

NEGOTIATED RULEMAKING

What is Negotiated Rulemaking?

Negotiated rulemaking is a process in which all interested and affected parties and the agency seek a consensus on the content of a rule. The process is generally informal and flexible and allows agencies to conduct negotiations as they see fit. As outlined below, agencies are encouraged to engage in this type of rulemaking whenever it is feasible to do so.

Agencies whose administrative procedures are governed by IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” are required to conduct negotiated rulemaking whenever feasible and to publish a “Notice of Intent to Promulgate a Rule” in the Administrative Bulletin. If it is determined that negotiated rulemaking is not feasible, the agency is required to provide public notice of its determination. Typically this is done when the agency proceeds to formal rulemaking (i.e., proposed rulemaking) by explaining in its “Notice of Rulemaking - Proposed Rule” why negotiated rulemaking was not conducted. The need to adopt a temporary rule, the simple nature of the changes being made to the rule, the lack of identifiable representatives of affected interests, or the determination that affected interests are not likely to reach a consensus are all circumstances that make negotiated rulemaking infeasible. As stated in IDAPA 04.11.01, an agency’s determination that negotiated rulemaking is not feasible is not a reviewable action.

Likewise, a rulemaking that is being done to comply with an existing state or federal law or regulation or a controlling judicial decision or court order cannot be negotiated. The agency’s ability to negotiate the content of the rule is negated by these overriding mandates.

Rulemaking Notice - Notice of Intent to Promulgate a Rule

Specific information is required to be included in the “Notice of Intent to Promulgate a Rule” (negotiated rulemaking) that is published in the Administrative Bulletin. The notice must state the dates, times, and locations of any scheduled meetings, if available, explain how a person may participate in the rulemaking, indicate where and if copies of the preliminary draft may be obtained, describe the principal issues involved and whose interests are likely to be significantly affected by the rule, and provide agency contact information.

For agencies that have opted out of the Attorney General’s Administrative Procedure Rules by adopting their own procedure rules, the negotiated rulemaking process is less structured. As explained below, the Administrative Procedure Act (Section 67-5220, I.C.) allows for a more informal process and gives the agency much discretion as to how it proceeds through the process.

How to Initiate Negotiated Rulemaking

Pursuant to Section 67-5220, Idaho Code:

*(1) An agency **may** publish in the bulletin a notice of intent to promulgate a rule. The notice shall contain a brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking, and shall include the purpose of the rule, the statutory authority for the rulemaking, citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking, and the principal issues involved.*

The notice shall identify an individual to whom comments on the proposal may be sent.

(2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged to proceed through such informal rulemaking whenever it is feasible to do so.

Publication of the preliminary draft of the negotiated rule text by the agency is optional. If a draft of the rule has been prepared by the agency but has not been published in the Idaho Administrative Bulletin, a copy of the text being discussed is usually made available or provided to the participants prior to the meeting.

The agency is free to invite separate groups at separate times, hold several meetings to include all interested parties, invite written comments, etc. This part of the rulemaking process is intentionally **flexible** and **informal**. Meetings should be designed to “negotiate” the proposed changes or ideas with those who will be affected. There is no legal time limit on this process. The intention is that these meetings result in the formulation of a proposed or temporary rule and regular rulemaking proceedings are initiated. However, in some cases the result of the “negotiations” may be that regular rulemaking proceedings are not initiated, rulemaking activities cease, and no additional action is taken.

As in all rulemaking activities, an official rulemaking record must be prepared by the agency when initiating negotiated rulemaking. The rulemaking record must include all information required by Section 67-5225, Idaho Code. (See Section on Rulemaking Record in this manual.)

What are the Advantages to Negotiated Rulemaking?

- *Negotiating the content of the rule text before it is published in the Administrative Bulletin can save time and money because, in many instances, the discrepancies in the amendments or potential problems can be resolved before committing additional resources to the rulemaking.
- *It can improve the substance of proposed rules by drawing upon shared information, expertise, and technical abilities possessed by the affected persons.
- *It aids in arriving at a consensus on the content of the rule.
- *Expedites formal rulemaking.
- *Lessens the likelihood that affected persons will resist enforcement or challenge the rules in court.
- *Public and industry constituents are generally more satisfied with the outcome if included in the process in the beginning rather than at the end, or not at all.
- *Negotiated rulemaking is an informal process. Public hearings on rulemakings are held only to receive testimony and comments. Negotiated rulemaking meetings allow for interactive discussions on the subject matter between the parties in an attempt to reach consensus.

PROPOSED RULE

What is a Proposed Rule?

A formal, written proposal by the agency to adopt a new rule or amend or repeal an existing rule in accordance with the Administrative Procedure Act is called a proposed rule. In order for any rule to become a final (permanent) and enforceable rule, it must, at some point, be a proposed rule and publish in the Administrative Bulletin. Proposed rulemaking is a legal process with strict procedural requirements that must be followed in order for the rule to become legally enforceable. The following is an excerpt from the Administrative Procedure Act that outlines what must take place once an agency initiates regular rulemaking proceedings and submits a notice of proposed rulemaking for publication in the Administrative Bulletin.

Pursuant to Section 67-5221(1), Idaho Code, the Notice of Proposed Rulemaking must contain the following information:

- (1) *Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:*
 - (a) *The specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
 - (b) *A statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
 - (c) *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 when the pending rule will become effective; provided, however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule;*
 - (d) *The text of the proposed rule prepared in legislative format;*
 - (e) *The location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
 - (f) *The manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
 - (g) *The manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and*
 - (h) *The deadline for public (written) comments on the proposed rule.*

The PARF (Proposed/Temporary Administrative Rules Form)

Prior to initiating regular rulemaking proceedings (proposed rulemaking) or before adopting a temporary rule, the agency must file a Proposed/Temporary Administrative Rules Form (PARF) with the Division of Financial Management (DFM) in the Governor's Office. The PARF provides the Governor's Office with a brief synopsis of the need for the rulemaking as well as an estimate of any costs related to the implementation of any rule changes. A copy of the signed PARF must be submitted as part of the rulemaking packet to the Rules Coordinator's Office prior to the publication of a proposed or temporary rulemaking in the Bulletin. All PARF forms are reviewed by the DFM financial analysts and the governor's policy analysts. Once a review of the PARF is completed, the approved form is signed and returned to the agency. If it is not approved, the agency is notified that it cannot proceed with the rulemaking. If questions arise during the review, a call is placed by DFM to the agency for any needed clarification.

Please note that the PARF form should be downloaded from the DFM website. This is the official PARF and is the only form that will be accepted by DFM. The agency may be asked to provide the text of the rule to the analysts. If a draft has been prepared, the draft may be submitted along with the PARF. If no draft is available, simply follow any instruction from DFM for later submission.

Filing a Proposed Rulemaking for Publication in the Bulletin

All rulemaking filings must be submitted to the Rules Coordinator's Office for publication. The APA no longer requires that any rulemaking documents be filed with the Legislative Services Office (LSO). A change made to the Administrative Procedure Act during the 2008 legislative session removed the requirement that an agency submit copies of all proposed and temporary rulemakings filings to LSO. It is now the responsibility of the Administrative Rules Coordinator to file all required rulemakings with the Legislative Services Office.

Newspaper Legal Notice

Coinciding with the publication of proposed rules in the Bulletin, the Rules Coordinator publishes a legal notice in the newspaper with the largest paid circulation in each county of the state. The legal notice is a declaration of an agency's intent to propose a new rule or to amend or repeal an existing rule. The legal notice must contain a brief description of the subject matter of the proposed rulemaking, the name and address of the agency proposing the rulemaking, the rule docket number, title of the chapter, and the written comment submission deadline date. This legal notice also alerts the reader to any public hearings that may be scheduled on any rulemakings, extensions to the deadlines for submitting written comments, and where copies of the Bulletin are available and how they may be obtained. ***While the newspaper legal notice is required to provide notice of proposed rulemakings only,*** it also identifies any temporary rules that have been adopted and provides information on any scheduled public hearings and negotiated rulemaking meetings that are being held. It does not address pending or final rules, executive orders of the Governor or other documents that may also appear in the same Bulletin. Because the legal notice is required to give notice of all proposed rulemakings, the legal notice is not published if there are no proposed rulemakings being published in the Bulletin.

(Always refer to the Administrative Bulletin for the full text of the notices and rules and for dates, times and locations of any scheduled hearings or meetings.)

Can a Proposed Rule Be Enforced? What is the Effective Date?

When a rule is in the proposed stage of a rulemaking, it cannot be enforced. Since it is of no force and effect, it has no effective date. If the proposed rule is being published in conjunction with the adoption of a temporary rule, the agency will assign an effective date to the temporary rule only. A final effective date is added only after the rule has completed the process and gone through the legislative review process and has been approved as a final rule.

Vacating A Proposed Rulemaking

If an agency rule is published as a proposed rule in the Administrative Bulletin and the agency, for whatever reason, decides to stop the rulemaking prior to the rule being adopted as a pending rule, it may do so. In order to end the rulemaking at this stage in the process, the agency must “vacate” the rulemaking. A “Notice of Vacation of Proposed Rulemaking” must be filed with the Rules Coordinator’s Office for publication in the Bulletin in order to alert the public that no further rulemaking activity will occur on the rulemaking. This legally ends all rulemaking activity on the rulemaking and the process stops. Consequently, once a proposed rulemaking is vacated, it is void and it cannot be resurrected. The agency must initiate a new rulemaking under a new docket number and start the rulemaking process over again.

Moratorium on Proposed Rulemaking

Prior to the beginning of the legislative session a moratorium is imposed on state agencies that restricts them from promulgating proposed rules. This moratorium on proposed rulemaking begins in mid November and is in effect until the adjournment of the legislature session. The analysts at the Legislative Services Office who review and prepare an analysis of the proposed rules for the germane joint subcommittees stop reviewing proposed rules and begin drafting legislation for the upcoming session at this time. The various germane joint subcommittees that review the prepared analyses and the proposed rules do not meet during the legislative session. For these reasons, the Legislative Services Office will not accept proposed rulemaking filings during the legislative session. Because the germane joint subcommittees’ review of all proposed rulemakings is a procedural requirement of the APA, the Rules Coordinator’s Office cannot publish a proposed rulemaking without the necessary analysis and review. Consequently, Rules Coordinator’s Office cannot accept proposed rulemaking filings for publication in the Bulletin during the moratorium.

Please note that *the moratorium affects only proposed rulemakings* and does not affect negotiated, temporary, or pending rulemakings, all of which may be submitted for publication during the moratorium and the legislative session.

TEMPORARY RULE

What is a Temporary Rule?

A temporary rule is a rule that can be made immediately effective and enforceable upon its adoption by the agency or adopting authority prior to review and approval by the legislature. If not made immediately effective, it becomes effective and enforceable on the date specified in the rulemaking notice that is published in the Administrative Bulletin. However, a temporary rule can **only** be adopted and made enforceable if it meets certain criteria outlined in the APA and is approved by the Governor's Office. It is used in "emergency" situations and is in effect for a specific period of time. The following is an excerpt from the APA that outlines the criteria for adopting a temporary rule.

Pursuant to Section 67-5226(1), Idaho Code, a temporary rule can be adopted only:

(1) *If the governor finds that:*

- (a) *protection of the public health, safety, or welfare; or*
- (b) *compliance with deadlines in amendments to governing law or federal programs; or*
- (c) *conferring a benefit;*

requires a rule to become effective before it has been submitted to the legislature for review, the agency may proceed with such notice as is practicable and adopt a temporary rule.

A temporary rule can be adopted **ONLY** when justified by one or more of these three findings. The Governor's Office determines whether or not the temporary rule is justified based on the information supplied on the Proposed Administrative Rules Form (PARF). The PARF must be submitted for approval prior to filing a temporary rulemaking for publication even if the rulemaking is not a proposed rule. Temporary rules are not subject to Section 67-5222, Idaho Code, that allows for public participation in the rulemaking. Unlike a proposed rule, the agency **is not required** to accept requests for public hearings or written comments regarding the temporary rule nor is temporary rule subject to legislative review prior to its adoption and enforcement by the agency.

Publication of a Temporary Rule in the Bulletin

Pursuant to Section 67-5226(4), Idaho Code, a temporary rule must be published in the "***first available issue of the Bulletin after its adoption by the agency.***" Failure to submit a temporary rule for publication in the first available Bulletin is a procedural violation of the APA. Such violation may result in the rule being voided and, once voided, the rule is null and of no force and effect. A procedural violation of this type may result in legal action against the agency that can have serious repercussions for both the agency and the regulated parties.

A Temporary Rule Imposing a Fee or Charge

A temporary rule that imposes a fee or charge may be adopted by the agency **only if the governor finds that the fee or charge is necessary to avoid "immediate danger"** which justifies the imposition of the fee or charge. Failure to obtain approval from the Governor for temporary fee rules makes the rule voidable. If voided, the temporary rule is declared null and void and of no force and effect.

How Long is a Temporary Rule Effective?

Temporary rules that are **adopted** (not published but adopted) by an agency **BEFORE** the

beginning of a legislative session are subject to legislative review. All temporary rules must be reviewed by the germane committees of the legislature and affirmatively approved by concurrent resolution of the legislature in order to remain in effect beyond the end of that session. Temporary rules that are adopted **DURING** a legislative session remain in effect until the next succeeding regular session of the legislature or until they expire under their own terms or other provision of law (Idaho Code, 67-5226(6)). Failure to submit the temporary rule for review and extension, or rejection of the temporary rule by the legislature, renders the rule null and void and of no force and effect. The legislature retains the right to review any and all rules that are part of the Administrative Code regardless of when the rule was promulgated.

Pursuant to Sections 67-5226(3) and (6), Idaho Code:

(3) *In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective...*

(6) *Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter unless the temporary adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.*

Temporary and Proposed Rulemaking - Concurrent Rulemaking and Bulletin Publication

The APA requires that the text of a temporary rule be published in the Administrative Bulletin. The same is true for a proposed rule. For this reason combining the temporary and proposed rules into a single, concurrent rulemaking is allowed when the text of the two rulemakings is identical. This saves time and reduces publication costs since the rule text is published only once. These two rulemaking actions are considered separate, legal actions even though published concurrently. Once a temporary rule is adopted the agency must begin the promulgation of a proposed rule unless the temporary rule will expire under its own terms.

Rescission of a Temporary Rule

The statutory rulemaking authority given to an agency that allows for the adoption of a temporary rule also allows the agency to rescind a temporary rule that it has adopted, published in the Bulletin, and put into effect.

An agency may rescind a temporary rule for a number of reasons. If the rule is being replaced by a new temporary rule, has been published concurrently with a proposed rulemaking being that is being vacated, or the temporary rule is no longer being enforced, the agency may rescind the rule. If a temporary rule is published concurrently with a proposed rule, it may be rescinded without affecting the proposed rule, if that is the agency's intent. It is not necessary to rescind a temporary rule that expires under terms specified in the rulemaking notice or other provision of law. A temporary rule that is rescinded or expires is replaced by previously codified text.

In order for an agency to rescind a temporary rule, a notice of such rulemaking action (Notice of Rulemaking - Rescission of Temporary Rule) must be published in the Bulletin.

PENDING RULE

What is a Pending Rule?

Section 67-5201(14), Idaho Code, defines a pending rule as a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review. It is “pending” legislative review for final approval. In short, this is the agency’s “final rule,” or more correctly stated, this is the version of the rulemaking that the agency would like to have the legislature approve as the final rule that is effective and enforceable.

When Does a Pending Rule Become a Final Rule?

Pursuant to Section 67-5224(5) a pending rule will become “**final and effective**”...

(a) . . . upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

(b) When the legislature approves, amends or modifies a pending rule pursuant to section 67-5291, Idaho Code, the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution.

(c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved, amended or modified by concurrent resolution.

In the case of a pending rule wherein the effective date is to be applied retroactively, even though the specified effective date listed in the pending rule precedes the adjournment date of the legislative session, the rule cannot become effective and enforceable before the conclusion of the session at which it was submitted for approval. Upon adjournment, the rule is then applied retroactively as a final rule, not as a pending rule. This simply means that a pending rule is never an enforceable rule and cannot be codified as such.

Publication of a Notice of Rulemaking - Adoption of Pending Rule

The following information is required to be published in Notice of Rulemaking - Adoption of Pending Rule in the Bulletin after an agency adopts a pending rule:

- (a) a statement giving the reasons for adopting the rule;*
- (b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- (c) the date the pending rule will become final and effective (See Section 67-5224(5), I.C.);*
- (d) an identification of any portion of the rule imposing or increasing a fee or charge;*
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*

-
- (f) *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 when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.*

Agencies are required to republish the affected text of the pending rule when substantive changes have been made to the proposed rule; however, it is not always necessary to republish all the text of the pending rule. It is at the discretion of the Rules Coordinator to determine how much of the pending rule must be republished. For those pending rules that are being adopted as they were initially proposed, only the “Notice of Rulemaking - Adoption of Pending Rule” must be published. It is not necessary to republish the text of the pending rule when no changes have been made.

Prior to amending or adopting the pending rule, all written and oral comments received during the proposed rule comment period must be fully considered by the agency. Additional substantive changes may be made to the pending rule prior to its adoption. These changes, however, must be a “logical outgrowth” of the original proposed changes and may not include any new text that does not meet this criteria.

When Fees or Charges Are Imposed.

You must describe any fee or charge being imposed by the adoption of a pending rule in the pending rulemaking notice. This includes fees that are being increased, decreased, or eliminated. The APA also requires that each agency provide OAR with a separate, written description of any pending rule or portion of it that imposes a new fee or charge or increases an existing fee or charge. This description must include a citation of the specific statute that authorizes the agency to impose or increase the fee or charge. These are then provided to the legislative committees upon their request. (See Section 67-5224(6), Idaho Code)

Making Corrections to Codified Rules.

Section 67-5202 of the APA gives the Rules Coordinator the authority to make non-substantive changes to codified rules outside regular rulemaking procedures.

Pursuant to 67-5202(2): *“The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.”*

Changes of this type are not required to be published in the Bulletin. If an error of this type is found in your rules, simply contact the Rules Coordinator’s Office and the correction will be made.

Correcting a Pending Rule Prior to Legislative Review

If an error is found in a pending rule that has published in the Bulletin but the rule has not yet been reviewed by the legislature, a Notice of Correction to Pending Rule may be published in the Bulletin to correct the error. The corrected text of the pending rule would then be submitted to the legislature for review and approval.

FINAL RULE

What is a Final Rule?

Pursuant to 67-5201(9), Idaho Code, a final rule is defined as a rule that has been adopted by an agency under regular rulemaking procedures pursuant to the APA and is in effect. Final rules are sometimes referred to as “permanent” rules and these rules, for most part, comprise the Administrative Code.

How does a Rule become a Final Rule?

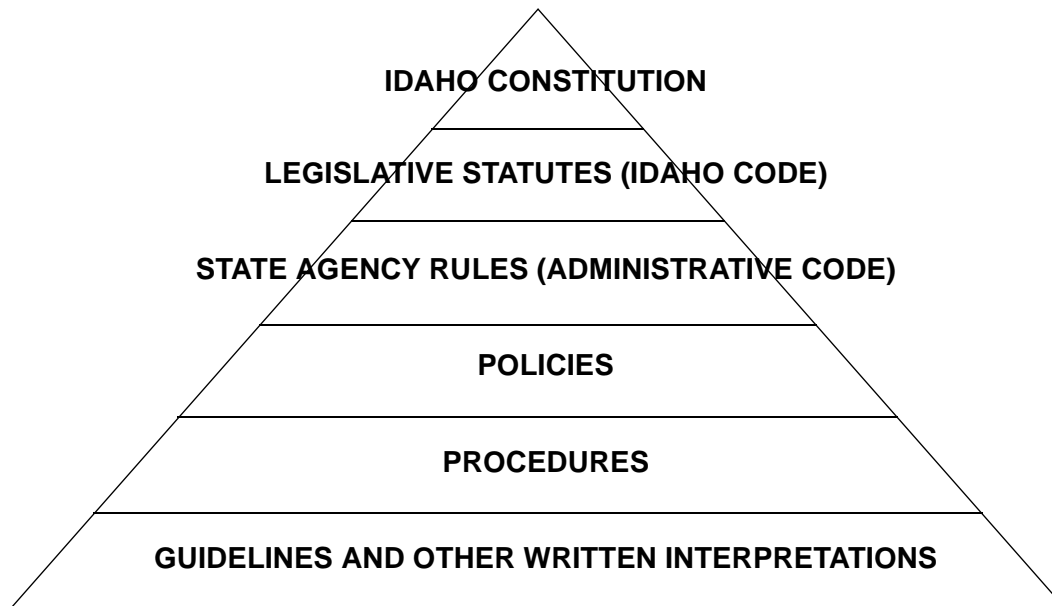
Section 67-5224(5), Idaho Code, states that a pending rule will become final at the end of the legislative session after it has been reviewed and approved by the legislature. No pending rule adopted by an agency will become final and effective before the conclusion of the regular or special legislative session at which it was submitted for review. A rule which is final and effective may be applied retroactively, if such date is provided in the pending rule.

A rule cannot become valid and enforceable (final) unless it has been promulgated in accordance with the regular rulemaking requirements of the APA. This means that a rule cannot become a final rule until it has been submitted for review for final approval by the Idaho legislature. After reviewing a pending rule, the legislature may adopt a concurrent resolution approving the pending rule; however, if the pending rule, or any part of it, is not rejected during the review process, a concurrent resolution is not necessary for a rule to become final and effective. If the legislature takes no action on a pending rule after reviewing it, the pending rule becomes final and goes into effect at the conclusion of the session or on such other date as specified in the rule.

Where the legislature finds that the agency rule is inconsistent with the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted rejecting the rule or any part it. Any rules, or parts thereof, that are rejected by a concurrent resolution of the legislature are required to be published in the Bulletin to show the changes made to the rule and what the final version of the rule is. The agency will be notified that such action has occurred and it is the responsibility of the agency to publish a “Notice of Rulemaking - Final Rule” reflecting the action taken by the Legislature and the effective date of that action. In some cases, another rulemaking may be required to conform to the provisions of the concurrent resolution.

At the conclusion of the legislative session, the Rules Coordinator’s Office publishes an “Omnibus Rulemaking Notice of Final Legislative Action” that lists all rulemakings submitted to the legislative committees for review. Rulemakings are listed by docket number along with the final status of the rulemaking. The notice includes all pending rules that have become final rules and all temporary rules which have been extended and will remain in effect beyond the end of the session. Also listed is the number of the concurrent resolution that has affected a rulemaking, if applicable, and gives the effective dates of all rules reviewed and finalized. If the legislature does not reject a pending rule submitted for review, it becomes final and is codified into the Administrative Code. In these cases no further agency action is required.

HIERARCHY OF STATE DOCUMENTS



As with most organizations, a hierarchy is established to define the levels of precedent for state government documents. To illustrate these various levels, the analogy of a pyramid is useful. Each increasing level becomes smaller in size, yet greater in scope. The state Constitution defines the legislature. The legislation creating an agency defines and restricts the agency's authority, which in turn restricts the scope of its rulemaking powers.

Idaho Constitution: Supreme law of the land; very difficult to change; framework of the government.

Legislative Statutes (Idaho Code): Legislative branch of government creates the uniform laws from which society must operate. Law usually contains: 1) a program the Legislature wants accomplished; 2) the executive branch agency it designates to carry out the program; and 3) guidelines for implementation.

Agency Rules (Administrative Code): The executive branch of government is broken into various subdivisions known as departments, divisions, agencies, offices, bureaus, and commissions. Rulemaking is the law-making power of these subdivisions and is governed by the Administrative Procedures Act. Rules carry the force and effect of law and interpret, prescribe or implement a law or policy or the procedure and practice requirements of an agency. They govern what the public may or may not do. Agencies are charged with enforcing laws the Legislature passes. Rules made under the statutory authority are general in scope. They are made to apply to all persons in a class, not to particular parties or single individuals, and must be applied equally. Because the statute normally does not contain all details, the designated agency must interpret the Legislature's intent and develop a method to implement the program. Agencies do not originate state's policy, but rather merely implement the state's policy.

Policy: Mission statement. A general statement with no specifics. It is a high-level, overall plan embracing the general goals, acceptable methods, actions, and conduct of an agency. Usually an internal management tool used in the day-to-day operation of the agency. Does not have the force and effect of law

Procedure: Step-by-step implementation of policy. Does not have the force and effect of law.

Guidelines: Description of procedures. Does not have the force and effect of law.

RULE PROMULGATION: STEP-BY-STEP PROCEDURES

STEP	PROCEDURE
1.	Inception - decision to initiate rulemaking is made and agency prepares the rulemaking record.
2.	Agency prepares a Proposed/Temporary Administrative Rules Form (PARF) and submits it to the Division of Financial Management (DFM - Governor's Office). (This form must be submitted when doing either Proposed or Temporary Rulemaking.)
3.	Both DFM and Governor's Policy Advisors review the PARF before either approving or denying the rulemaking request and return a signed copy to agency. (Agency should receive signed PARF before proceeding with the rulemaking in the event it is rejected.)
4.	*Agency prepares a "Notice of Intent to Promulgate a Rule - Negotiated Rulemaking" and forwards it to the Office of Administrative Rules (OAR). (E-mail** and hard copy)
5.	**"Notice of Negotiated Rulemaking" is published in the Administrative Bulletin (Bulletin).
6.	*Negotiated Rulemaking meetings are held.
7.	If amending an existing rule, the agency requests a copy of the rule from OAR who will forward the rule to the agency electronically via E-mail.
8.	Agency prepares Rulemaking Packet: "Notice of Rulemaking - (Proposed, Temporary, or Temporary/Proposed) Rulemaking," the rulemaking checklist, signed copy of the PARF, and text of rule in legislative format.
9.	Agency submits the rulemaking packet via E-mail** and files one hard copy packet with OAR. OAR will then prepare and file a copy of the notice and rule text of the Proposed, Temporary, or Temporary/Proposed Rulemaking with the Legislative Services Office (LSO).
10.	OAR checks the rulemaking packet for copies of the signed PARF, checklist, and hard copies. OAR reviews the notice and text for required information, formatting, numbering, and style, assigns rulemaking docket number, prepares docket for publication, and generates a rough draft that is then sent to the agency for its review and approval.
11.	Agency reviews the rough draft of the docket (pdf copy that is emailed), makes corrections and changes and forwards the hard copy back to OAR.
12.	The Proposed, Temporary, or Temporary/Proposed Rule is published in the Bulletin.
13.	Public hearings are held, if scheduled or requested. (Holding a public hearing is not required unless the hearing has been scheduled by the agency or the agency receives requests for a hearing in writing by 25 persons, a political subdivision, or another state agency.)
14.	Comment period ends. (Minimum of 21 days; may be extended, if necessary or desired.)
15.	Agency reviews and gives consideration to all oral and written comments that are submitted. Agency may then make changes, if warranted, to the proposed rule based on the comments received. Changes made must be a logical outgrowth of the proposed rule. (All submitted comments become part of the rulemaking record and made available for public inspection.)
16.	Agency adopts pending rule (pending legislative review) and prepares "Notice of Rulemaking - Pending Rule" and the rulemaking checklist. The text of the rule in legislative format is submitted only if changes are made to the pending rule, otherwise no rule text is published.
17.	Agency submits the "Notice of Rulemaking - Pending Rule" and text via E-mail**.

STEP	PROCEDURE
18.	OAR reviews the pending rulemaking checklist, notice and, if applicable, the rule text. OAR prepares rulemaking docket for publication and generates a rough draft of the pending rule that is then sent to the agency for review.
19.	Agency reviews the rough draft (pdf copy) of the docket, makes corrections or changes and forwards the hard copy back to OAR. If no changes, agency initials copy and approves draft.
20.	Pending Rule docket is published in the Bulletin. The Pending Rule remains unenforceable until it has been reviewed and approved by the Legislature and becomes a final rule.
21.	In December, OAR submits the Legislative Review Books of all Pending, Pending Fee, and ***Temporary Rules to the Germane Legislative Committees for review.
22.	Legislative Rules Review takes place during the first weeks of the session and agency presenters testify before the Legislative Committees on their rules that have been submitted for review.
23.	Rule dockets are approved or rejected by the Legislature. Rejection of a rule docket, or any part of it, requires the adoption of a concurrent resolution (both Houses). When rejected, the agency must submit a Notice of Final Rule and any necessary rule text to OAR for publication in the Bulletin. Pending Rules that are approved by the Legislature become final and enforceable at the end of the session and require no further action by the agency. Pending Fee Rules must be affirmatively approved by concurrent resolution to become effective. Temporary Rules must be extended by concurrent resolution to remain in effect after the conclusion of the session.
24.	Upon adjournment of the legislative session, OAR publishes an Omnibus Notice of Legislative Action on Pending Rules and Temporary Rules. (This notice usually publishes in first available Bulletin after the session ends and lists all pending, pending fee, and temporary rulemakings by docket number that were submitted for review and includes the effective dates of the rules, Bulletin volume numbers, and any action taken on the rules by concurrent resolution.)
25.	The Final Rule becomes effective upon the adjournment of the legislative session (sine die), or on the date specified in the Pending Rule, or on the date of the concurrent resolution, if any, affecting the rule.

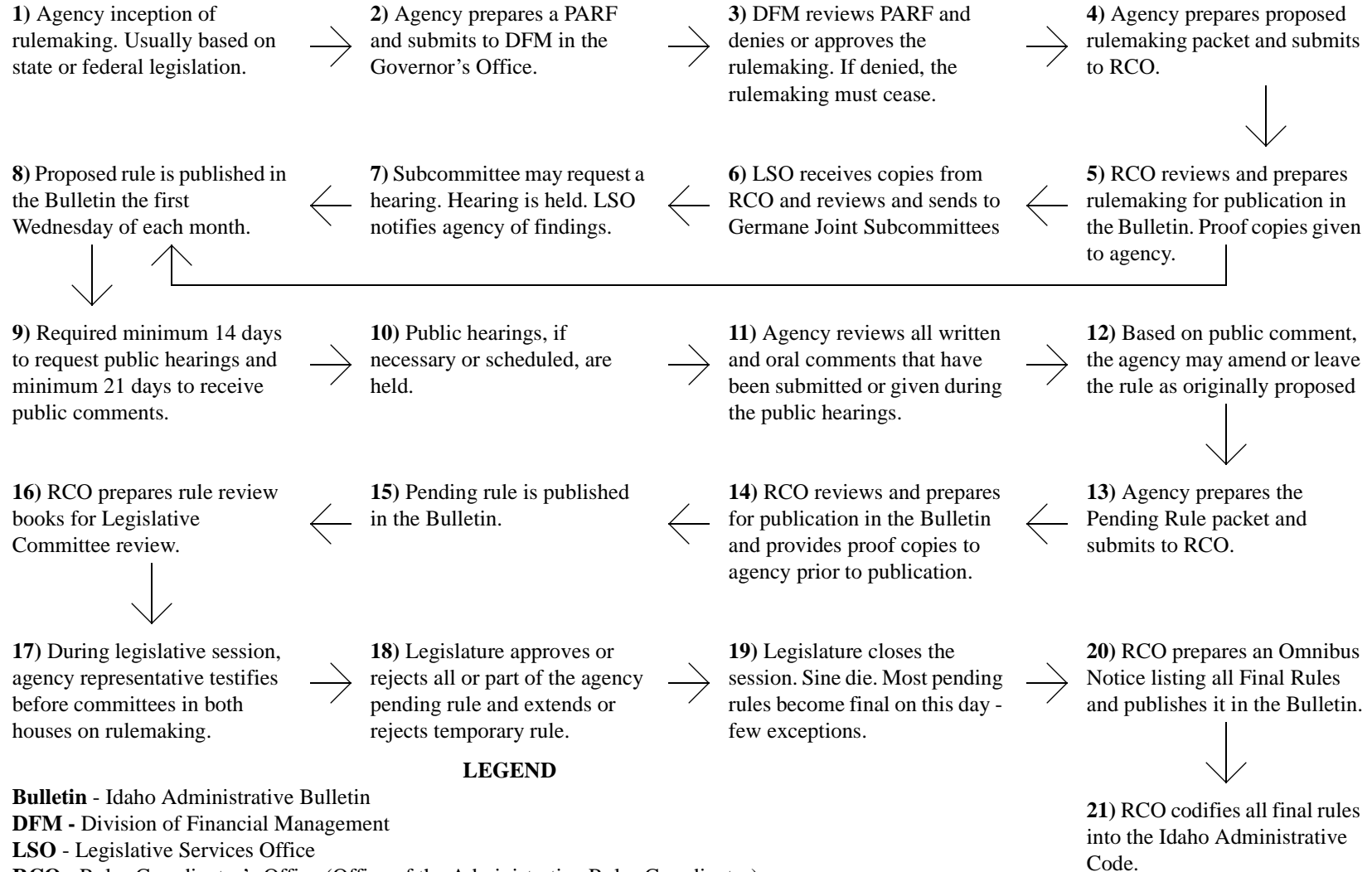
***This is an optional step of the Rulemaking Process (see page 2 - Negotiated Rulemaking).**

****When filing a rulemaking electronically (E-mail), the agency must still forward a signed hard copy of the PARF form and the rulemaking notice and rule text as verification of authenticity. Notices should be signed by the person who has rulemaking authority or a designee of such person, board or commission.**

*****A Temporary Rule (that may or may not also be a Proposed Rule) that has not been adopted as a Pending Rule prior to beginning of the Legislative session will be submitted by OAR to the Legislature for review and extension unless advised by the agency to do otherwise. Legislative approval extending a temporary rule allows the rule to remain in full force and effect until the end of the next succeeding legislative session unless the temporary rule will expire by its own terms or by a provision of law prior to the end of the next succeeding legislative session.**

A moratorium on proposed rulemaking begins in mid-November and is in effect until the end of the legislative session. The moratorium affects proposed rulemakings only and does not affect negotiated, temporary, or pending rulemakings which may be filed for publication.

PROPOSED RULE FLOW CHART



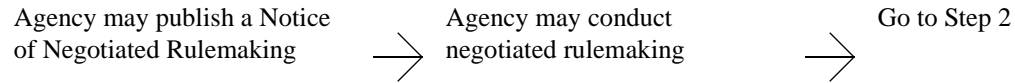
LEGEND

- Bulletin** - Idaho Administrative Bulletin
- DFM** - Division of Financial Management
- LSO** - Legislative Services Office
- RCO** - Rules Coordinator's Office (Office of the Administrative Rules Coordinator)
- PARF** - Proposed/Temporary Administrative Rules Form

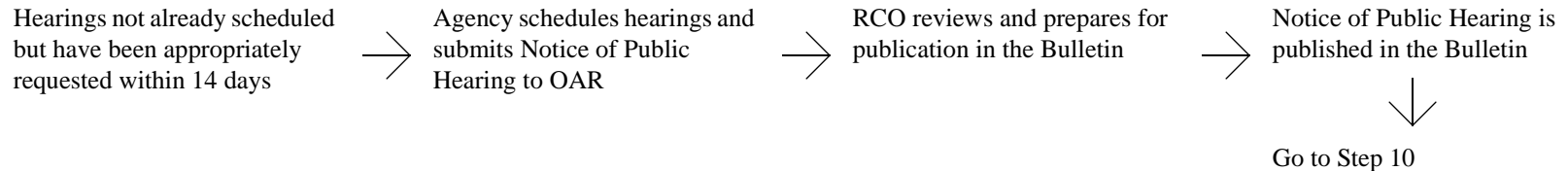
Publication Schedule can be found in the Idaho Administrative Bulletin, the Rule Writer's Manual or at: www.state.id.us/adm/adminrules

VARIATIONS ON A PROPOSED RULE

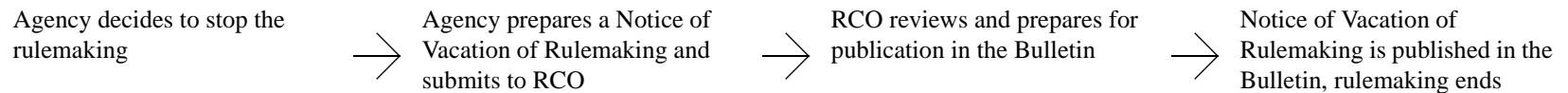
Negotiated Rulemaking - would occur between steps 1 and 2



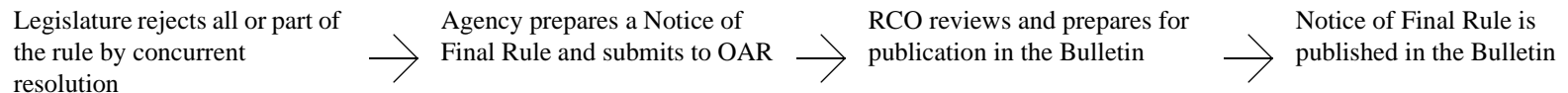
Hearings not scheduled but are properly requested - would occur between steps 9 and 10



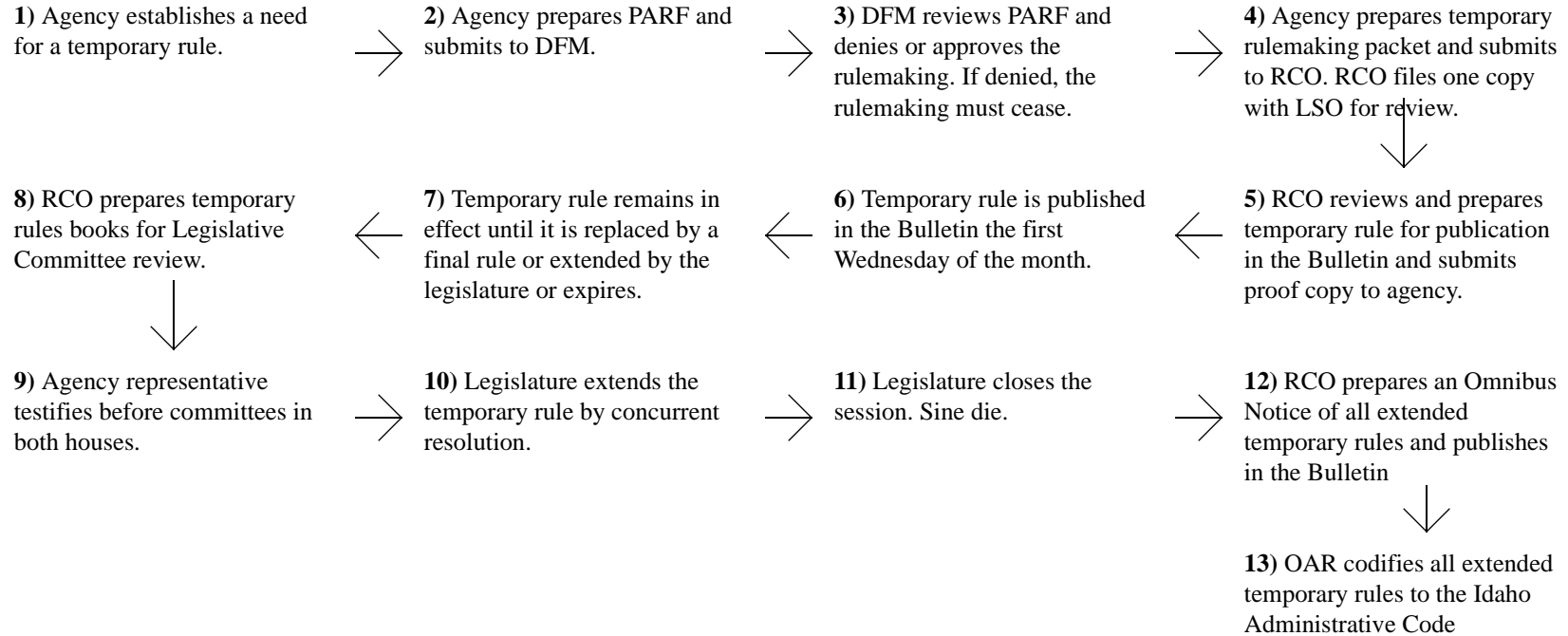
Based on public comment, the agency chooses to stop the rulemaking - would occur after step 12



Legislature rejects all or part of the rule - would occur in step 18 and before step 20



TEMPORARY RULE FLOW CHART



LEGEND

Bulletin - Idaho Administrative Bulletin
DFM - Division of Financial Management
LSO - Legislative Services Office
RCO - Rules Coordinator Office (Office of the Administrative Rules Coordinator)
PARF - Proposed/Temporary Administrative Rules Form
 Publication Schedule can be found in the Idaho Administrative Bulletin, the Rule Drafter’s Manual or at:
www.state.id.us/adm/admrules

VARIATIONS OF TEMPORARY RULE PROMULGATION

Agency no longer has a need for the temporary rule - would occur after step 7

Agency does not want the temporary rule to remain in effect.



Agency prepares a Notice of Recission of Temporary Rule and submits to RCO.



RCO reviews and prepares for publication in the Bulletin and submits proof copy to agency.



Notice of Recission of Temporary Rule is published in the Bulletin



RCO recodifies the rule by removing temporary from the Code.

Legislature does not extend all or part of the rule - would occur in step 10 and before step 12

Legislature rejects part or all of temporary rule by concurrent resolution.



Upon signature of the concurrent resolution, RCO codifies the rule by removing temporary rule from the Code.

Temporary rule is published during the legislative Session - would occur in step 7

Temporary rule remains in effect until the next legislative session.



Go to step 8

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2009

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
09-1	January 2009	*November 14, 2008	January 7, 2009	January 28, 2009
09-2	February 2009	January 9, 2009	February 4, 2009	February 25, 2009
09-3	March 2009	February 6, 2009	March 4, 2009	March 25, 2009
09-4	April 2009	March 6, 2009	April 1, 2009	April 22, 2009
09-5	May 2009	April 3, 2009	May 6, 2009	May 27, 2009
09-6	June 2009	May 1, 2009	June 3, 2009	June 24, 2009
09-7	July 2009	May 29, 2009	July 1, 2009	July 22, 2009
09-8	August 2009	July 3, 2009	August 5, 2009	August 26, 2009
09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	**August 28, 2009	October 7, 2009	October 28, 2009
09-11	November 2009	October 2, 2009	November 4, 2009	November 25, 2009
09-12	December 2009	November 6, 2009	December 2, 2009	December 23, 2009

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	*November 13, 2009	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 25, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
10-5	May 2010	April 2, 2010	May 5, 2010	May 26, 2010
10-6	June 2010	April 30, 2010	June 2, 2010	June 23, 2010
10-7	July 2010	June 4, 2010	July 7, 2010	July 28, 2010
10-8	August 2010	July 2, 2010	August 4, 2010	August 25, 2010
10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	**August 27, 2010	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

****Last day to submit a proposed rulemaking before moratorium begins and last day to submit a pending rule to be reviewed by the legislature.***

*****Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***



State of Idaho

DIVISION OF FINANCIAL MANAGEMENT

Executive Office of the Governor

Proposed/Temporary Administrative Rules Form

Section 1 (To Be Completed by Agency)			
Agency Name:	STARS Agency Code:	Fax Number:	Date:
Contact Person:	Title:	Phone:	Email:
Person Authorizing Rule:	Title:	Phone:	Email:
Section 2 (To Be Completed by Agency)			
Statutory Authority for the Rulemaking (Idaho Code, Federal Statute, or Regulation):			
Title, Chapter, and Possible Docket (IDAPA) Number:			
This Rule is: ___ Proposed ___ Temporary		Effective Date:	
If Temporary Rule: ___ Necessary to protect the public health, safety, and welfare: or ___ Compliance with deadlines in amendments to governing law or federal programs: or ___ Conferring a benefit.			
If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5226(2):			
Provide a fiscal impact statement, both positive and negative, by fund source for all programs affected:			
Need for Proposed Rule Change:			
Proposed Rule Changes (Summary Only):			
Interst Group(s) or Citizens Affected:			
Section 3 (DFM Use Only)			
DFM Analyst Comments:			
DFM Analyst Fiscal Impact Review:			

DFM Analyst Signature & Date:	Recommend: ___ Yes ___ No	
Gov Special Assistant Signature & Date:	Recommend: ___ Yes ___ No	
DFM Administrator Signature & Date:	Approval: ___ Yes ___ No	
Section 4 (To Be Completed by DFM PARF Coordinator)		
	Date	Days
Received by DFM from Agency		
Received by DFM Analyst from Coordinator		
Received by Coordinator from Analyst		
Received by Governor’s Special Assistant from Coordinator		
Received by Coordinator from Governor’s Special Assistant		
Received by DFM Administrator		

Return via email to: info@dfm.idaho.gov

INSTRUCTIONS FOR COMPLETING THE PARF

(PROPOSED/TEMPORARY ADMINISTRATIVE RULES FORM)

IMPORTANT NOTE: This form must be used for both Proposed and Temporary rulemakings. It must be completed and submitted to the Division of Financial Management and returned to the agency BEFORE any documents are submitted to the Office of Administrative Rules. In most cases, the actual rule writing should not begin until this form has been returned to the agency by DFM. A signed copy of this form must accompany your rulemaking submissions to the Office of Administrative Rules and the original should be filed in the rulemaking record.

Agency Name: *Include the agency, board, or commission name.*

STARS Agency Code: *Include the agency or commission STARS agency code.*

Contact Person: *Name of the person that will answer any questions about the rulemaking from the Division of Financial Management (DFM) or the Office of the Governor.*

Phone Number: *Phone number of the contact person.*

IDAPA Numbers and Chapter Name: *IDAPA, Title and Chapter number and the official title of the rule on which the rulemaking is being done.*

This rule is:

Proposed: *Checkmark if the rulemaking is a proposed rule that the agency wants to become a final rule.*

Temporary: *Checkmark if the rulemaking is temporary and has a temporary effective date.*

Effective Date: *Enter the temporary effective date of the rule.*

If Temporary Rule: *At least one of the justifications must be checkmarked. Pursuant to Idaho Code, Section 67-5226, these are the ONLY justifications for temporary rulemaking.*

If this is a temporary rule which imposes a FEE or CHARGE, provide justification as described in Idaho Code, Section 67-5226(2):

A rule adopted . . . which imposes a fee or charge may become effective under this section before it has been approved, amended or modified by concurrent resolution only if the Governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

Provide a fiscal impact statement, both positive and negative, by fund source for all programs affected: *Indicate source of funds for program(s) addressed by rulemaking.*

Need for Proposed Rulemaking: *Enter why this rulemaking is necessary.*

Proposed Rules Changes (Summary Only): *Enter a BRIEF summary of what will be changed in the rule. NOTE: it is not necessary to address each section, simply write a brief summary of the overall rulemaking.*

Interest Group(s) or Citizens Affected: *Enter the groups or citizens that this rulemaking will affect.*

RULEMAKING CHECKLIST FORM

Docket Number (Assigned by the Office of Administrative Rules): _____
(OAR will assign docket number to Negotiated, Proposed and Temporary rulemakings.)

IDAPA, Title, and Chapter Number and Chapter Name: _____

Agency: _____

Agency Contact and Phone Number: _____

Legal Authority for rulemaking - Idaho Code Section(s): _____

This rulemaking is a: (Check at least one; it may be necessary to check more than one)

Negotiated Rulemaking _____ Proposed Rulemaking _____ Temporary/Proposed Rulemaking _____

Temporary Rulemaking _____ Effective Date of Temporary Rule: _____

Temporary Rule Justification (See Idaho Code Section 67-5226):

- _____ Protection of the public health, safety, or welfare; or
- _____ Compliance with deadlines in amendments to governing law or federal programs; or
- _____ Conferring a benefit.

Pending Rule _____ Date Pending Rule Will Become Effective: _____

Amendment to Temporary Rule _____ Rescission of Temporary Rule _____

Correction to Pending Rule _____ Vacation of Rulemaking _____

Does any portion of this rulemaking impose or increase a fee or charge?

If yes, provide a specific description along with the citation of the statute authorizing the imposition or increase.

Does this rulemaking have a negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year?

If yes, include a descriptive summary of the fiscal impact involved

Does this rulemaking necessitate changes in other rules?

If yes, please specify.

Have any documents been Incorporated by Reference into this rulemaking?

Specify an exact description of document(s) incorporated by reference.

HAVE YOU...

- _____ 1. Has your legal counsel reviewed your rulemaking?
- _____ 2. Received approval from your Director, Board or Commission for the rulemaking?

HAVE YOU INCLUDED...

- _____ 1. An approved and signed Proposed/Temporary Administrative Rules Form (PARF)?
- _____ 2. An electronic version of the Notice and complete text of the rule changes in Word or RTF?
- _____ 3. An 8 1/2 by 11 hard copy of the Notice and the complete text of the rule changes?

INSTRUCTIONS FOR COMPLETING THE RULEMAKING CHECKLIST FORM

The Office of the Administrative Rules Coordinator requests that each agency prepare and submit a Rulemaking Checklist with any rulemaking activity.

Docket Number: For all proposed, temporary, and negotiated rulemakings the docket number will be assigned by the Office of Administrative Rules. Once the docket number is assigned to the rulemaking, it remains the same until the rulemaking is completed. The docket number consists of the IDAPA number, the Title and chapter numbers, the year in which the rulemaking first publishes in the Bulletin and the sequential number of each subsequent rulemaking for that same chapter during the calendar year.

Example:

The first rulemaking published in 2007 on IDAPA 44, Title 01, Chapter 01 becomes:

Docket No. **44-0101-0701**

The second rulemaking published in 2007 on IDAPA 44, Title 01, Chapter 01 becomes:

Docket No. **44-0101-0702**

IDAPA, Title, and Chapter Number and Chapter Name: *Enter the IDAPA, Title, and Chapter number. Enter the full Chapter name.*

Example:

IDAPA 44, Title 01, Chapter 01, "Rules of the Administrative Rules Coordinator"

Agency: *Enter the name of your agency, commission or board.*

Agency Contact and Phone Number: *Enter the name of the contact person that is responsible for the submission of this docket to the Office of Administrative Rules. This person may not be the same person as the individual who will answer questions from the public concerning the rulemaking. The contact person should be the individual the OAR will contact if there are questions or problems with the submitted docket.*

Statutory Authority for this rulemaking is given in: *Enter the Section(s) that give(s) the agency, commission or board authority to do rulemaking. There may be more than one Section from Idaho Code, Code of Federal Regulations, etc. If there is a specific statute which has initiated this rulemaking, this statute should also be noted.*

This rulemaking is a (check at least one; it may be necessary to check more than one):

Negotiated Rulemaking - Check if this is a negotiated rulemaking.

Proposed Rulemaking - Check if this is a proposed rulemaking and is to become a final rule.

Temporary Rulemaking - Check if this is a temporary rule.

Temporary and Proposed Rulemaking - Check if the rulemaking is both proposed and temporary.

Temporary Effective Date - Enter the date the temporary rule is to become effective.

Temporary Rule Justification (See 67-5226, Idaho Code) - There are only three justifications for temporary rules. Check the appropriate justification. It should be the same justification used on the PARF.

Pending Rule (pending legislative review) - Check if the rulemaking has been adopted by the agency and is pending legislative review.

Date Pending Rule will become effective - Enter the date the pending rule is to become effective if this date is different than the default date (end of the legislative session, sine die).

Pursuant to Section 67-5224(5), Idaho Code...a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

Correction to Pending Rule - Check if this is a correction to a pending rule.

Amendment to Temporary Rule - Check if this is an amendment to a temporary rule.

Rescission of Temporary Rule - Check if rescinding a temporary rule that is in effect.

Vacation of Proposed Rulemaking - Check if the proposed rulemaking is being vacated and terminated.

Does any portion of this rulemaking impose or increase a fee or charge?

Both the Notice of Proposed Rulemaking and the Notice of Pending Rule must include a description of any fee or charge that is imposed or increased through a rulemaking and must be published in the Administrative Bulletin. After submission of a pending rule to OAR, the agency must file a separate statement to OAR indicating that a pending rule imposes or increases a fee or charge. This statement is then included in a report to the legislature that includes all pending rules imposing fees or charges.

Does this rulemaking have a negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year?

Both the Notice of Proposed Rulemaking and the Notice of Pending Rule must include a description of any negative fiscal impact to the state general fund that is greater than ten thousand dollars (\$10,000).

Do this rulemaking necessitate changes in other rules?

Specify the correlation to other rules that will need to be amended because of this rule change.

Does this rulemaking incorporate by reference any documents?

Give an exact description of the document(s) incorporated by reference.

Section 67-5229, Idaho Code states:

Incorporation By Reference:

- (1) If the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient an agency may incorporate by reference in its rules and without republication of the incorporated material in full, all or any part of:
 - (a) A code, standard or rule adopted by an agency of the United States;

- (b) A code, standard or rule adopted by any nationally recognized organization or association;
 - (c) A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or
 - (d) A final rule of a state agency; provided however, that a state agency shall not adopt a temporary rule incorporating by reference a rule of that agency that is being or has been repealed unless the rule providing for the incorporation has been reviewed and approved by the legislature.
- (2) The agency shall, as part of the rulemaking:
- (a) Note where copies of the incorporated material may be obtained or electronically accessed; and
 - (b) If otherwise unavailable, provide one (1) copy of the incorporated material to the Idaho supreme court law library.
- (3) The incorporated material shall be identified with specificity and shall include the date when the code, standard or rule was published, approved or became effective. If the agency subsequently wishes to adopt amendments to previously incorporated material, it shall comply with the rulemaking procedures of this chapter.
- (4) Unless prohibited by other provisions of law, the incorporated material is subject to legislative review in accordance with the provisions of section 67-5291, Idaho Code, and shall have the same force and effect as a rule.

The Supreme Court Law Library has requested that copies of all incorporated materials be sent to the law library even if they are otherwise available. If requested, copies must be sent to the Office of Administrative Rules. Copies of incorporated materials must also be available at the agency or access to them must be provided.

The checklist is completed and forwarded to the Office of Administrative Rules with the Notice of Rulemaking and the text of the rule in legislative format.

ACCESSING IDAHO'S ADMINISTRATIVE RULES

THE IDAHO ADMINISTRATIVE BULLETIN

The Idaho Administrative Bulletin is published the first Wednesday of each month by the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin contains the executive orders of the governor, all official rulemaking notices that include notices of negotiated, proposed, temporary, pending, and final rules, and the official rulemaking text of all proposed, temporary, pending, and final rules. It may also contain any other documents required by law to be published in the Bulletin such as various rulemaking indexes, as well as any other legal or regulatory documents an agency feels should be published in the Bulletin.

State agencies are required to provide public notice of all rulemaking activities and to invite public input during specific rulemaking activities. This notice is provided through the Idaho Administrative Bulletin. Additional notice of proposed rulemakings is provided through a required **legal notice** that is published in local newspapers throughout the state. The publication of the legal notice coincides with the publication of proposed rules the Bulletin and provides information regarding an agency's initiation of proposed rulemaking and invites public comment to the rulemaking. If no proposed rulemakings are being published in the Bulletin, then a legal notice is not published in the newspapers. The time and manner for submission of comments or requests for public hearings are specified in the rulemaking notice published in the Bulletin and these deadlines are also noted in the newspaper legal notice. All information submitted to the agency in the form of public comment becomes part of the agency's official rulemaking record.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

Each volume of the Administrative Bulletin is cited by year and issue number. For example, Volume 07-1 refers to the first Bulletin issued in calendar year 2007, Volume 07-1 refers to the first Bulletin issued in calendar year 2007, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the month a particular Bulletin is published, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. For example, the Bulletin published in September 2007 is cited as Volume 07-9; the January 2009 Bulletin is cited as Volume 09-1.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The Idaho Administrative Code is published once a year pursuant to Section 67-5204, Idaho Code, and is a compilation of all final and enforceable administrative rules in effect in Idaho. This includes any temporary rules that have been adopted and are of full force and effect at the time of publication. Temporary rules that have been extended by concurrent resolution and remain in effect after the legislative session ends and pending rules that have been approved during the legislative session as final rules are codified into, and become part of, the Administrative Code. Because negotiated, proposed, and pending rules are not codified rules they are not part of the Administrative Code and are published only in the Bulletin.

To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Rulemaking Index** of Idaho Administrative Rules, printed in each Bulletin. This Index lists each rulemaking by docket number, gives the status of the rulemaking activity (i.e. proposed, pending, etc.), cites the Bulletin volume number in which the rulemaking was published, and shows an effective date, if applicable.

A comprehensive, quarterly Cumulative Rulemaking Index is published in the Bulletin in February, May, August, and November and lists all rulemakings promulgated since July 1993. The remaining volumes of the Bulletin contain an abridged version of the Cumulative Rulemaking Index that lists all active rulemakings that are still in the process and have not been reviewed or adopted as final rules. A complete Cumulative Rulemaking Index is published electronically on the Administrative Rules website and is updated each month with the publication of the Bulletin. It can be found at the following link "Cumulative Rulemaking Index": <http://adm.idaho.gov/adminrules/bulletin/cumindex.htm>

This electronic index lists each agency alphabetically with all rulemaking dockets listed sequentially in the order they published in the Bulletin. Each docket number listed in the index is linked electronically back to the Administrative Bulletin in which the rulemaking notice and rule text of that docket was published.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Administrative Bulletins are available for viewing and use by the public in all 44 county law libraries, most state university, college, and community college libraries, the State Supreme Court Law Library, the Idaho State Library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, BYU Idaho Library, and Northwest Nazarene University Library. Since July 2004 the Administrative Code is available at the public depositories listed here on CD-ROM only. The printed edition of the Administrative Code can be viewed at the Office of the Administrative Rules Coordinator. The Bulletin is also available in the printed version at these locations.

INTERNET: ONLINE ACCESS TO THE RULES AND RELATED DOCUMENTS

Electronic access to all the official publications of the Office of the Administrative Rules Coordinator is available at the following web address: adm.idaho.gov/adm/adminrules/

The various links found on the Administrative Rules website provide access to current proposed rules, the Idaho Administrative Code, the Idaho Administrative Bulletin, the Cumulative Rulemaking Index, the Rule Writer's Manual, the Legislative Committee Rules Review Books, and DFM's Proposed/Temporary Administrative Rules Form (PARF). Additional links to a search engine, the Idaho Code, and archival versions of the Bulletins and Administrative Code are available also.

RULE NUMBERING AND DOCKETING

HOW TO USE THE IDAHO ADMINISTRATIVE CODE AND BULLETIN

Administrative rules and rulemaking documents, produced by state agencies and published in the Idaho Administrative Code and Idaho Administrative Bulletin, are organized and tracked by a numbering system. Each individual rule has a set of numbers that identify the agency, the division, the program, and so forth.

To identify an administrative rule of a state agency, a set of numbers unique to each agency and its rules is used. Each agency has a two-digit identification code number known as the “**IDAPA**” number. Most state agencies or departments are organized by or subdivided into divisions. An agency division is assigned a two-digit number called a “**TITLE**” number. These divisions or “titles” are often comprised of individual bureaus or programs and each of these is referred to as a “**CHAPTER**” and is assigned another two-digit number. The following is an example of a typical citation to a chapter of rules using the IDAPA, Title and Chapter number: **IDAPA 38.05.01**.

The rule text of each “chapter” is divided into major **Sections** which may be further subdivided into **Subsections**. The breakdown of the Subsections follows an alpha/numeric system that alternates with each subdivision. A citation to a Subsection of a rule and its breakdown is shown in the following example. Note that each set of identifying numbers is separated by a period.

IDAPA 38.05.01.060.02.c.ii.

“**IDAPA**” is a term that designates all officially promulgated administrative rules in Idaho that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin. All state agency rules follow this same numbering scheme using their own unique numbers.

“**38**” is the IDAPA agency code for the Idaho Department of Administration.

“**05**” is the Title number for a Division within the Department. In this example it is the Department of Administration’s Division of Purchasing.

“**01**” is the Chapter number 01 of Title 05, “Rules of the Division of Purchasing.”

“**060**” refers to major Section **060**, “Content of the Invitation to Bid.”

“**02**” refers to the first level (numeric) Subsection **060.02**.

“**c**” refers to the second level (alpha) Paragraph **060.02.c**.

“**ii**” refers to the third level (numeric - lower case Roman Numerals) Subparagraph **060.02.c.ii**.

It is possible to further subdivide a rule using this alpha/numeric system; however it is prudent to avoid subdividing a rule into too many subsections because the rule can become cumbersome and difficult to follow and can be costly when publishing changes to the rule.

(See: “E. Section and Subsection Formatting,” for more information on numbering.)

DOCKETING SYSTEM USED IN RULEMAKING

When an agency begins a rulemaking and submits documents to the Office of Administrative Rules for publication, these rulemaking documents are assigned a **“DOCKET NUMBER.”** This docket number is used to “track” the rulemaking from start to finish. Because there can be many phases to a single rulemaking, the docket number remains the same until the rulemaking completes the promulgation process and the agency’s final adoption of the rule is either reviewed and approved by the legislature, or it is vacated, rescinded, or dies under its own terms.

Internally, the Bulletin is organized sequentially using the docket numbering system. The “docket number” is a series of numbers separated by a hyphen “-” (38-0501-0401). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rulemaking docket:

“DOCKET NO. 38-0501-0901”

“38” denotes the agency's IDAPA number; in this case the Department of Administration.

“-0501” refers to the “TITLE AND CHAPTER” numbers of the agency rule being promulgated; in this case TITLE **05**, the Division of Purchasing and Chapter **01**, “Rules of the Division of Purchasing”.

“-0901” the “09” denotes the calendar year or, in this example, 2009. The calendar year reflects when the docket is **published** in the Bulletin, not the year the rulemaking was initiated or submitted by the agency. In other words, a rulemaking that begins in 2008 and is submitted to OAR in November 2008 for publication in January 2009 will be assigned a docket number using “09” to denote the publication date, not “08” when the rulemaking was started by the agency.

“-0901” the “01” is the sequential numbering of a rulemaking that is submitted and published during that year. In this case, it is the first rulemaking action on Chapter 01 published in calendar year 2009. Any subsequent rulemakings done on this same chapter that publish in 2009 will be numbered sequentially and indicate the actual number of rulemakings being done on this chapter: i.e. “-0902,” “-0903,” and so on.

Using the above example, rulemakings that were done in 1999 are numbered “38-0501-9901,” “38-0501-9902,” and so on. Likewise, those done in 2000 were numbered “38-0501-0001,” “38-0501-0002,” and so on.

Within each docket, only the affected sections (those sections being amended or removed) of the chapter are printed. (See Sections Affected Index in each Bulletin for a listing of these.) The individual “affected” sections of a docket are printed in the Bulletin sequentially (e.g. Section “100” appears before Section “200” and so on). Whenever the sequence of the numbering is broken the following statement will appear:

“(BREAK IN CONTINUITY OF SECTIONS)”

PUBLIC PARTICIPATION IN RULEMAKING

Our ability as citizens to have access to the rulemaking process is protected by the Administrative Procedure Act (APA), Title 67, Chapter 52, Idaho Code. The goal of the APA is to ensure that the public is aware of and can participate in agency rulemaking activities. Public participation in the rulemaking process is guaranteed by the requirement that agencies accept written comments and requests for public hearings that are submitted by the public. It also allows the public to petition an agency to change or repeal an existing rule or adopt a new administrative rule. All such requests, comments, and petitions must be submitted in accordance with the criteria specified in the APA and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," and as outlined in the rulemaking notices (proposed and negotiated rulemaking) published in the Bulletin. The agency's responsibilities in dealing with such requests are also addressed in the APA and are outlined further in the following pages.

WRITTEN COMMENTS

Pursuant to Section 67-5222(1), Idaho Code:

- (1) *Prior to the adoption, amendment, or repeal of a rule, the agency shall afford all interested persons reasonable opportunity to submit data, views, and arguments, orally or in writing. The agency shall receive comments for not less than twenty-one (21) days after the date of publication of the notice of proposed rulemaking in the bulletin.*

As stated above, the Administrative Procedure Act requires agencies promulgating rules to ***provide a comment period of not less than twenty-one (21) days for all proposed rulemakings.*** The comment period begins the day the docket is published in the Idaho Administrative Bulletin. The Bulletin publishes on the first Wednesday of every month. The comment period may be longer than the required twenty-one (21) days, but cannot be less than twenty-one (21) days.

The deadline date of the comment period must be included in the notice of proposed rulemaking, (see page 14 for publication schedule dates) as well as the mailing address and name of the contact person to whom comments must be submitted.

All written comments, which are submitted within the specified time, must be accepted by the agency and made a part of the rulemaking record. The rulemaking record must be kept on file with the agency and made available for public inspection. All written comments **must be considered** by the agency prior to the adoption of the pending rule. However, consideration of a written comment **does not** mean that the comment will necessarily cause further amendment to the proposed rule, nor must it be incorporated into the text of the pending rule.

All changes made to the rulemaking docket after the comment period has expired must be justified by comments received through the rulemaking process. If technical errors are found in the rule docket, a comment must be made by the agency. All such comments are required to become part of the rulemaking record. Please note that an agency may comment to its own rulemaking and make substantive changes based on those comments.

Also, it is important to note that written comments may be submitted at a public hearing and carry as much weight as a verbal comment at the hearing.

PUBLIC HEARINGS

Pursuant to Section 67-5222(2), Idaho Code:

- (2) *When promulgating substantive rules, the agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or an agency. The request must be made in writing and be within fourteen (14) days of the date of publication of the notice of proposed rulemaking in the bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later. An opportunity for oral presentation **need not be provided** when the agency has no discretion as to the substantive content of a proposed rule because the proposed rule is intended solely to comply:*
- (a) *with a controlling judicial decision or court order; or*
 - (b) *with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule.*

It is not necessary to schedule public hearings when it is unlikely that there will be any comment or controversy resulting from the rule changes or if they meet the criteria listed in Section 67-5222(2)(a) and (b). If meeting one of the criteria in (a) or (b), it should be explained in the rulemaking notice that this is the reason that a request for a hearing is being denied. However, when rule changes are being promulgated that do not meet the exceptions listed above and may result in comment or controversy, it may be prudent on the part of the agency to schedule public hearings to avoid delays in the rulemaking process. This can be done at the negotiated rulemaking stage or when publishing the notice of proposed rulemaking.

Agencies are required to allow a minimum of fourteen (14) days for a request for oral presentation. (This means fourteen (14) days after the publication date of the Bulletin or fourteen (14) days before the end of the written comment submission deadline, whichever is later.) The proposed rulemaking notice must notify the public of the deadline date for requesting a hearing and that the request must be submitted in writing to the agency.

IDAPA 04.11.01.833.03, "Idaho Rules of Administrative Procedure of the Attorney General," states that an agency cannot conduct a hearing unless the time, place, and date of the hearing has been published in the Idaho Administrative Bulletin. Agencies that have opted out of the Attorney General's rules must still provide notice of a public hearing unless the agency has published "stated findings" as to why these rules do not apply. If the agency decides that a hearing(s) is necessary and the "Notice of Rulemaking - Proposed Rule" has already been published in the Bulletin, a separate "Notice of Public Hearing" must be submitted for publication prior to the hearing being held. The Rules Coordinator's Office does not provide any additional notification regarding public hearings other than that given in the Bulletin or in the listing in the newspaper legal notice. If an agency is required or feels that further notice is necessary for a public hearing than that required by the APA, it is the agency's right and responsibility to take whatever steps necessary to ensure that adequate notice is given to the public. There are no set criteria on how an agency may advertise these public hearings.

When an agency holds a public hearing, a staff member from the agency may facilitate the hearing, or the agency may hire (and pay) an outside hearing officer to do so. The agency should either tape the hearing(s) or hire a court reporter to transcribe the hearing. The transcripts or other information gathered at the public becomes part of the rulemaking record for that docket. A public hearing is used to gather comments from the public not debate the issues involved in the rulemaking. Having a dialogue with the public is not the purpose for the hearing; rather it is a time reserved for the public to comment orally on the rule.

THE RULEMAKING RECORD

Prior to beginning a rulemaking, the agency must prepare a rulemaking record. The rulemaking record must be maintained in the main office of the agency and the record shall be available for public inspection and copying. The rulemaking record is a public document and is subject to the Public Records Act (Title 9, Chapter 3, Idaho Code).

Pursuant to 67-5225, Idaho Code, the rulemaking record must contain:

- (a) *copies of all documents published in the Bulletin;*
- (b) *all written petitions, submissions, and comments received by the agency and the agency's response to those petitions, submissions, and comments;*
- (c) *all written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule;*
- (d) *a record of any oral presentations, any transcriptions of oral presentations, and any memorandum prepared by a presiding officer summarizing the contents of the presentations; and*
- (e) *any other materials or documents prepared in conjunction with the rulemaking.*

The rulemaking record must be maintained and made available for public inspection for at least two (2) years after the rule becomes final and effective.

The rulemaking record need not constitute the exclusive basis for agency action on that rule, unless provided for by law.

The Rules Coordinator's Office maintains both electronic and hard copy of all rulemaking documents submitted for publication. However, the Rules Coordinator does not maintain copies of comments or hearing information. This information is the responsibility of each agency and must be part of the rulemaking record.

LEGAL NOTICES - NEWSPAPER PUBLICATION

The Idaho Administrative Procedure Act requires the Administrative Rules Coordinator to publish an abbreviated legal notice in many of the state's local and county newspapers that contains specific information relating to all *proposed rulemakings* that are being published in the Administrative Bulletin. OAR must publish specific information about the proposed rulemaking and it must coincide with the publication of the Bulletin:

Pursuant to Section 67-5221(2), Idaho Code:

- (a) *Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter..*

The content of the notice is also outlined in this section of the APA and must include the agency name and address, rule number (docket number), subject matter of the rule being promulgated, and the comment deadline. A statement that informs citizens where they can view the Administrative Bulletin must also be published in a "prominent bold typeface."

The APA also requires that this notice be published in a "display advertisement" format not in a "legal notice" format. This particular legal notice is exempt from the state law which limits the amount a newspaper may charge a state agency for publishing legal notices. OAR negotiates a price for this notice to ensure the lowest possible cost with the maximum amount of coverage. The cost of publishing the legal notice is covered by the per-page fee the agencies pay for publication in the Bulletin.

The APA specifies that the legal notice must be published in "...at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county." The legal notice prepared by OAR currently publishes in forty-two (42) daily, weekly and bi-weekly newspapers in the state and is circulated in all forty-four (44) counties.

As stated, the comment deadline for submission of written comments is included in the newspaper notice for each docket listed. However, information concerning the **manner** in which the public shall submit such comments or request public hearings is not included in the newspaper notice. This information is contained in the rulemaking notice that is published in the Bulletin and the reader is directed to go to the Bulletin for the specifics on how this is done.

The newspaper notice does include a list of those rule dockets which have public hearings scheduled. However, the newspaper notice **does not** provide any hearing information; again it simply guides the reader to the Bulletin publication where the public hearing schedule is found. Public hearing information is contained in the rulemaking notice that is published in the Bulletin.

Some rules that are also governed by federal programs may require more public notice than is required by the Idaho Administrative Procedure Act. In those cases, agencies must make their own arrangements for additional notification and publication. The Office of Administrative Rules will assist the agency, if needed, in providing additional notification, particularly if additional newspaper publications are needed.

RULE WRITING

STYLE, FORMAT, AND CONTENT

I. INTRODUCTION

Before beginning to write an administrative rule, the rule writer should identify all statutes, state and federal, that authorize the rulemaking and determine the objectives and intended results of the rulemaking. The rule writer should then develop an outline of the rule that organizes the general subject matter of the rule in a logical and understandable manner.

The rule writer should always be cognizant that the basic purpose of a rule is to balance the statutory mandates and legislative intent of the law with any constitutional or federal mandates, the policies of the governor, and the agency mission.

Fully understanding the intended results of the rule is critical to its effective composition. For example, the rule writer should be able to identify clearly whether the intent is to restrict and regulate certain activities or to provide a benefit under certain conditions.

Internal organization is necessary to provide consistency to all agency rules. The rules of the Administrative Rules Coordinator (IDAPA 44.01.01) require each chapter to begin with certain “required” sections. These sections include legal authority, title and scope, written interpretations, administrative appeals, incorporation by reference, agency contact and office information, public records act compliance, and definitions. Next, the textual body should be divided by specific subjects, each a separate section of the rule. A difficult rule becomes more understandable to the reader if this consistent outline of textual organization is followed.

The basic concepts of this manual should be understood before beginning to write a rule. The following sections provide guidance to rule writers in composing, organizing, and formatting rules. They outline the style, format, and numbering requirements authorized by state law and include other standardized guidelines that are in general use, as well as some of the same standards used in drafting legislation.

II. GENERAL RULE WRITING GUIDELINES

A rule writer is often confronted with the problem of extracting the essence of the intent of the rule and putting it into coherent, readable text. The writing style described in this manual is intended to aid the rule writer in avoiding ambiguity. Rules written in this style should provide understandable terminology using the clearest language possible that does not leave the rule open to interpretation. This section is a review of the style to be followed for all Idaho administrative rules.

The rule writer must remember to retain as much of the codified rule text as possible when amending an existing rule. Any new text must seamlessly link with the existing text to form a consistent and clear statement of the statutory intent or other requirements of the law. To aid in this task, the rule writer should be familiar with the three basic objectives of rule writing: consistency, simplicity, and clarity.

A. STYLE

As they relate to rule writing the three basic objectives of style are consistency, simplicity, and clarity. Each call for common, precise terminology coupled with simple phrasing. While technical terms and other “terms of art” may be used, the rule writer should remember the audience and the generality of the reader. Use precise and simple language so that every rule is easily understood. In most cases, this understanding can be enhanced with complete definitions. Conversational tones should be avoided because in conversational tones, the writer reserves the right to explain his meaning; no such right is granted to a rule writer.

If possible, rules should be written to target the vast majority of readers, usually considered to be of junior high school reading level.

1. CONSISTENCY

The first style principle a rule writer must employ is consistency. Administrative rules should avoid unnecessary variation in sentence form and should use identical words for the expression of identical ideas, even to the point of redundancy and monotony. The same descriptive words and phrases, especially if included in a definitions section, should be used with the same meaning throughout the rule. Synonyms and synonymous expressions should be avoided in rule writing.

Do Not Say:

Each automobile owner must register his car with the Division of Motor Vehicles.

Say:

Each motor vehicle owner must register his motor vehicle with the Division of Motor Vehicles.

However, do not use the same word to denote different meanings.

Do Not Say:

Each tank must have a twenty (20) gallon tank for fuel.

Say:

Each tank must have a twenty (20) gallon fuel container for fuel.

Sections similar in substance should be similarly arranged and outlined. Parallel structure also aids comprehension and promotes consistency. Sentences should be arranged so that parallel ideas look parallel, especially in a list.

Do Not Say:

01. Duties. *The commission will:*
a. *Screen applicants;*
b. *It sets fees and does other neat stuff; and*
c. *Submitting reports.*

Say:

01. Duties. *The commission will:*
a. *Screen applicants;*
b. *Set fees; and*
c. *Submit reports.*

2. SIMPLICITY

The second principle of rule writing is simplicity. Use familiar words and phrases. Do not use jargon, slang, overly technical language or “legalese.” Use short words, try to keep sentences to ten words or less and use words of three syllables or less. Above all, if it is possible to omit a word and retain the desired meaning, do so. Using the principles of plain language writing will help make the rule easy to read and easy to understand.

3. CLARITY

The third principle of rule writing is clarity. When a rule is challenged and litigated, the court is generally not asked to decide questions of public policy but simply to tell the parties what the rule says. A rule writer must avoid being vague. Avoid the use of the terms “etc.,” “i.e.,” “e.g.,” “and/or,” “included, but not limited to,” or other variations of these terms.

Do not use abstract terms. Administrative rule language should be simple and concrete.

Do Not Say:

vehicles
firearms
aircraft

If You Mean:

automobiles
handguns
helicopters

Avoid “noun sandwiches.” Often, certain writing styles contains clusters of nouns. These can be avoided by using more prepositions.

Do Not Say:

Water resources loan plan

If You Mean:

A loan plan for water resources

Avoid the use of split infinitives.

Do Not Say:

It is necessary under this section
to promptly reply.

If You Mean:

It is necessary under Section 003
to reply promptly.

Avoid misplaced modifiers. The careless placement of a modifier may result in more than one meaning.

Do Not Say:

John saw Jane walking across the street.

Say:

John, while walking across the street, saw Jane.

Unless You Mean:

John saw Jane, who was walking across the street.

Avoid using indefinite pronouns as references. If a pronoun could refer to more than one person in a sentence, repeat the title of the person.

Do Not Say:

After the chairman appoints the director
he will administer this rule.

Say:

After the chairman appoints the director,
the director will administer this rule.

Avoid placing two or more prepositional phrases together. Word order becomes confusing when this occurs.

Do Not Say:

Each applicant for a license in Idaho...

Say:

Each license applicant from Idaho...

Unless You Mean:

Each applicant for a license to practice in Idaho...

III. FORMAT AND FORMAT RELATED TOPICS

A. DO'S AND DON'TS

- DO use FULL justification in formatting
- DO use one (1) TAB only, even at the Subsection level
- DON'T use unusual fonts - Use only a standard 10 to 12 point font
- DON'T use extra bolding
- DON'T include headers or footers
- DON'T add page numbers
- DON'T insert page breaks

The Rules Coordinator's Office converts all documents from their original versions to a desktop publishing program used for publishing the Code and Bulletin. Avoid using any unnecessary formatting tools available in most word processing programs. Many of these only make the conversion process more difficult. However, the use of "track changes" in Word is acceptable when making amendments to corrections to proof copies. Use versions of the most commonly used word processing programs such as Microsoft Word. Most word processing programs convert easily and cleanly and require a minimum amount of rekeying of text. Notification will be given to changes in software version requirements and upgrades.

B. LEGISLATIVE FORMAT (STRIKEOUT/UNDERScore)

When making amendments to a codified rule, the rule writer will edit the rule text using legislative format to show the changes being made. **In legislative format, text that is being omitted is struckout and new text is underlined (strike and underscore).** When removing and adding text, always strike out text being removed first and then add and underline the new text. Try to retain as much of the original text as possible. When text is only be added to the rule, simply insert the text in its proper place and underline. The following is an example of correct legislative format:

Example:

122. VISION SERVICE.

The Department will pay for vision services and supplies in accordance with the ~~following~~ guidelines and limitations listed below. All eyeglass frames and lenses provided to Medicaid recipients and paid for by the Medicaid Program will be purchased from the supplier designated by the Department. ~~(10-1-91)()~~

The use of underscoring and overstriking in a rule is limited to marking amended text. No other use is permitted because of the obvious confusion that would result.

In most cases when amending rules, the **ENTIRE** major section is published, even when changes are only being made to a small subsection. A major section consists of the three (3) digit section number followed by a catchline and all subdivisions contained therein.

C. EFFECTIVE DATES

Every section, subsection, paragraph, and subparagraph of a rule is required to have an effective date. The “effective date” is the date on which the rule becomes effective and enforceable or, as is often stated, when the rule has the “full force and effect of law.” Currently, the effective date of a rule coincides with the adjournment date of the legislative session during which the rule was reviewed and approved, unless another date is specified in the notice of pending rule or the date the rule is acted upon by concurrent resolution. The only exception to this is a “**RESERVED**” section which does not have an effective date.

Unless a temporary rule is being adopted by the agency, the rule writer does not insert an effective date when writing a rule. Since all rules must go through a legislative review before they become final, most final effective dates are not inserted into the rule until after the legislative session. The Rules Coordinator’s Office updates the final effective dates of all rules once the legislative review process has been completed.

Effective dates are not necessary after the **major section heading**. However, if the section heading is followed by text, other than a subsection, the date follows the text.

- * Effective dates are required for **EVERY** subsection, paragraph and subparagraph. The effective date is set flush right.
- * Don’t use zeros (0) in your effective date: Use (1-1-09) **NOT** (01-01-09)
- * When amending a section, subsection, paragraph and subparagraph strike the **entire** old effective date and underline the **entire** new effective date.
- * If sections or subsections are being renumbered only and no text is being amended, a new effective date is **NOT** required.
- * If the rule is proposed, leave eight (8) underscored spaces between the parentheses, as follows: (~~1-1-09~~)()
- * If the rule is temporary, add a “T” at the end of the effective date outside the parentheses as follows: (~~1-1-09~~)(1-1-09)T

Example of a Temporary Rule Effective Date:

122. VISION SERVICES.

The Department will pay for vision services and supplies in accordance with the following guidelines and limitations listed below. (~~10-1-99~~)(1-3-09)T

Example of a Proposed Rule Effective Date:

122. VISION SERVICES.

The Department will pay for vision services and supplies in accordance with the following guidelines and limitations listed below. ~~(10-1-99)~~()

Example of a completely new section within an existing chapter of rules (all text is underlined):

122. VISION SERVICES.

The Department will pay for vision services and supplies in accordance with the guidelines and limitations listed below. ()

Example of a section within a completely NEW CHAPTER of rules (no text is underlined):

122. VISION SERVICES.

The Department will pay for vision services and supplies in accordance with the guidelines and limitations listed below. ()

D. ORGANIZATION WITHIN THE CHAPTER - REQUIRED SECTIONS

The following **MAJOR SECTIONS** are required to be in each rule chapter and should be organized as follows:

000. LEGAL AUTHORITY. *(This section is used to cite to the agency's specific statutory authority that authorizes the rulemaking and should include a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking.)*

001. TITLE AND SCOPE. *(This section gives the complete official name of the rule chapter and gives a brief description of what the rule encompasses. This section should be formatted as follows:)*

- 01. Title.**
- 02. Scope.**

002. WRITTEN INTERPRETATIONS. *(This section notifies and directs the reader to any written statements given by the agency that pertain to an interpretation of the rule or the documentation for compliance with the rule. It is important to note that written interpretations are not enforceable.)*

003. ADMINISTRATIVE APPEALS. *(The language of this section should state whether or not the rule is subject to administrative appeal and cite the rule governing the appeal process.)*

004. INCORPORATION BY REFERENCE. *(This section should list any documents that are being incorporated by reference into the rule and give specific information regarding the incorporated document and where the incorporated documents may be obtained or viewed. See pages 49 and 50 for more information on the use of incorporated documents.)*

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

(This section gives information regarding the location of the agency's central office, office hours and mailing address where documents may be filed with the agency.)

006. PUBLIC RECORDS ACT COMPLIANCE. *(This section should contain language the states that the rule is subject to and in compliance with the Public Records Act.)*

007. -- 009. (RESERVED). *(These sections may be used for any other required sections that may be unique to a rule, otherwise they should remain as reserved sections.)*

010. DEFINITIONS. *(If applicable, this section includes terms of art or other language that are specific to the rule and that are used throughout the rule.)*

011. ABBREVIATIONS. *(If applicable, when using abbreviations or acronyms in rules this section defines what they are.)*

The following sections are no longer required to be included in an agency's rules. These sections have been incorporated into IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," and govern all agencies.

INCLUSIVE GENDER. *(This allows for the use of "he" or "his" to mean "he/she" or "his/her." Whenever possible, the language of a rule should always be gender neutral.)*

SEVERABILITY. *(This provision allows for part of a rule to be found invalid without affecting or invalidating any other parts of the rule.)*

E. SECTION AND SUBSECTION FORMATTING

A rule is broken down into components or subdivisions that give cohesiveness and clarity to the rule and allows the rule to be organized in a logical fashion. The breakdown of the rule follows an alpha/numeric system that alternates with each subdivision. The components or subdivisions of a rule are as follows: section, subsection, paragraph, and subparagraph. A further breakdown is not recommended but, when unavoidable, is allowed. Please contact the Rules Coordinator's Office when this situation arises. The following is an explanation of each subdivision and how each is formatted within an administrative rule.

1) Major Section. A major section or "**Section**" consists of a three (3) digit number, has one (1) tab before the section name or heading followed by a period at the end, and one (1) hard return. The section number and name are in **bold type-face** and "**upper case or "TITLE CAPS."** A section name is required to give a brief description of the section.

Example of a Major Section:

122. *[1 Tab]* **VISION SERVICES.** *[1 Hard Return]*

The Department will pay for vision services and supplies in accordance with the guidelines and limitations listed below. (7-1-06)

2) Subsection. The first subdivision level is called a “*subsection*” and breaks down a major section. It consists of a two (2) digit number that is followed by a “*catchline*” that gives a brief but accurate description of the subsection topic. There is one (1) tab before the subsection number and one (1) tab after the subsection number. The main words in the catchline are capitalized with one (1) space before the text. The **number** and **catchline** are in **bold type-face**.

Example of the Subsection level:

[1 Tab] **01.** [1 Tab] **Recalculation of Client Participation.**[1 space]The client participation amount must be recalculated annually at redetermination or whenever a change in income becomes know to the Department. (7-1-06)

Subsections are used only when multiple subdivisions (more than one) follow a major section or another subsection. Subsection formatting should follow a standard outline format. For instance, if there is not a second subsection (02.) that follows the first subsection (01.), the rule writer should try to make the text of Subsection 01. part of the major section rather than making it an individual subsection. This is true for all subsequent subdivisions.

3) Paragraph. The second subdivision level is called a “*paragraph*” and further subdivides a subsection. In following an alpha/numeric pattern, the paragraph level uses a bold type-face, lower case letter (**a., b., c.**) followed by a period. A catchline should not be used here, unless needed for clarity and is not redundant. Only one (1) tab is used before and after the alphabetic character. In a long sequence where all alphabetic letters are used, double the characters (**aa., bb., cc.,** etc.) and continue the sequence.

Example of the Paragraph level:

[1 Tab] **d.** [1 Tab] The Department’s payment for ambulance services is not to exceed usual and customary charges for normal services. (7-1-06)

4) Subparagraph. The third subdivision level is called a “*subparagraph*” and is a lower case roman numeral level (i., ii., iii.) followed by a period. Again, a catchline should not be used here, unless needed for clarity and is not redundant. Use only one (1) tab before and after the lower case roman numeral character. Bold type-face is not used at the subparagraph level.

Example of the Subparagraph level:

[1 Tab] ii. [1 Tab] The Department’s service charges are not to exceed usual and customary charges for normal services. (7-1-06)

The use of subdivisions past the subparagraph level (lower case roman numeral level) must be approved by the Administrative Rules Coordinator, **PRIOR** to publication. The subsequent numbering repeats the basic alpha/numeric pattern using parentheses. For example: 010.01.a.i.(1)(a), or 200.02.b.ii.(2)(b), etc.

F. RESERVED SECTIONS

Reserved sections can be utilized only at the major section level. Single or multiple sequential sections may be reserved. Subsections, paragraphs and subparagraphs cannot be held as “RESERVED”. Contrary to popular belief, there are no “hidden rules” lurking behind the “Reserved” sections. They are simply placeholders that are important when adding new sections.

Example:

007. [1 Tab] (RESERVED). or **007.** [1 Space]--[1 Space] **010.** [1 Tab] (RESERVED).

G. BREAK IN CONTINUITY OF SECTIONS

When making an amendment to a rule, it is not necessary to publish the entire chapter. In most cases only those sections with amendments are published. The individual sections that are being amended or those affected by the rulemaking are printed in the Administrative Bulletin sequentially (e.g. Section “200” appears before Section “345” and so on). Whenever the sequence of the section numbering is broken, the following statement will appear:

(BREAK IN CONTINUITY OF SECTIONS)

When an agency submits a rulemaking to the Rules Coordinator’s Office that amends existing rule text, this statement must appear between all sections being published that are not sequential. If one or more sections of the rule are “Reserved” and fall between two sections that are being amended, the “Reserved” sections will be printed instead of the “break in continuity” language.

H. REPEAL, REWRITES, AND NEW CHAPTERS

When a chapter of rules is no longer necessary, valid, or enforceable, it is usually in the agency’s best interest to repeal the chapter. The repeal of an administrative rule is a rulemaking activity and must adhere to all rulemaking provisions of the APA. Although it is not necessary to publish the text of a rule that is being repealed, it is required to publish the rulemaking notice (i.e. temporary, proposed, pending, and final rulemaking notices) repealing the chapter. Only an entire chapter of rules may be repealed. Sections, subsections, paragraphs and subparagraphs may not be repealed.

When an agency is amending a chapter of rules with extensive changes, the agency may want to consider repealing the entire chapter and doing a complete rewrite of it. The repeal and rewrite of a chapter must be done as two separate rulemakings because each is an individual rulemaking action that must be promulgated separately. Thus they are executed through separate rulemaking dockets. One docket repeals the existing chapter, the second docket rewrites the new chapter.

It is not necessary to publish the text of a rule that is being repealed. This is true whether or not the chapter will be rewritten as a new chapter. Because of this the use of legislative format is not required because there is simply nothing to strike out. If the rule is rewritten, it is, for all intents

and purposes, a brand new rule and, since it is all new text, it does not need to be underscored. This is generally a more cost effective method of publishing than using legislative format that would require striking out entire sections of text and underscoring all the new changes. In most cases less text is published overall and the rule is easier to read.

It is important to remember, however, that a complete rewrite of the chapter subjects the entire rule to the public participation requirement for proposed rulemaking and legislative review. This allows for the submission of written comments on those parts of the rule that may not have changed in the rewrite. If there are parts of a rule that the agency does not want to reopen to public comment, then the standard legislative format for rulemaking should be used to avoid this situation.

I. RENUMBERING

In most cases when making an amendment to a rule, the entire **MAJOR SECTION** containing the amendment is published regardless of where or what the change is. This can be very costly when minor changes to long sections of rules are being made. **RULE WRITERS SHOULD KEEP MAJOR SECTIONS AS SHORT AS POSSIBLE.** This can reduce future publication costs substantially. Since there are 1,000 sections (000 to 999) that can be used in each chapter, many sections can be “**RESERVED**” and interspersed throughout the chapter allowing new text to be added easily at anytime. This eliminates the future need for extensive renumbering of the entire section(s) and republication of unamended text. When numbering or renumbering major sections, the rule writer should keep related subjects within the same numerical sequence and use “**RESERVED**” sections to break up unrelated subjects.

When doing a rulemaking, a rule writer should always consider whether or not a long section can be broken up and renumbered at the same time the amendments to that section are being made. This can be very cost effective since all the text of the section will be published regardless of the number of amendments made to it. In most cases if sections and subsections are simple being renumbered and no substantive changes to the text are being made, the text is not considered to have been amended and the effective date is not changed.

On the following page is an example of how a major section was restructured during a rulemaking. Many of the subsections were changed to major sections and renumbered accordingly. Note that a change to Section 332 of the new rules results in a greatly reduced publication cost over a change to the same section of the old rules.

On the following page is an example of a renumbered Rule section:

Example of Renumbering of Rules

OLD RULE

NEW RULE

332. INCOME BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.

01. Application for Benefits. Children placed in custody of the Department often have income or benefits from one or several sources. These could include Social Security, veterans' benefits, Indian benefits or estates from deceased parents. (1-3-78)

a. It is the responsibility of the social service staff of the Field Office to make application for these benefits. (12-1-81)

b. Any change in payee or report on attendance at school must be handled by the Field Office. (1-3-78)

02. Accounting and Reporting. (1-3-78)

a. Regional Support Enforcement will be responsible for accounting for receipt of funds; therefore, applications must show the address of payee as Child Support Enforcement for the region involved. (4-1-86)

b. The Department will handle reports related to how much money has been received and how it has been utilized. (12-31-91)

03. Forwarding of Benefits. If the Department is receiving benefits and it is decided to return the child to the home of his parents or to relatives for a trial visit, the Department must be notified by memo, giving the name and address of the person to whom these benefits will be forwarded. (12-31-91)

a. If the placement is not successful, the Department must be notified immediately so benefits are not sent to the wrong party. (12-31-91)

b. If such placement continues for a period of six (6) months, a careful review must be initiated to determine a change of payee must be accomplished. (1-3-78)

04. Periodic Review of Benefits from Bureau of Indian Affairs (BIA). Field offices must maintain contact with the Bureau of Indian Affairs and review periodically benefits that may be available to children in foster care and assure such benefits are available for meeting the needs of the child. (1-3-78)

05. Treatment of Surplus Income. When a child has income that exceeds the cost of care, the surplus is deposited in a trust account in the child's name. (9-1-84)

06. Trust Account Reports. A quarterly accounting report from the Department's Bureau of Budget and Management will be prepared and distributed to the Department's Bureau of Social Services and the regions showing the trust fund balance for each child. (12-31-91)

07. Accessing Trust Accounts. All requests for expenditures from the trust account must be an integral part of the child's care plan. Written documentation of all requests will be sent to the Department's Regional Social Services Supervisors for approval. Written justification for the request will be sent by the Department's Regional Social Services along with a Form 303. The Bureau of Social Services will give the Bureau of Budget and Management written authorization to release the funds. (12-31-91)

333. -- 350. (RESERVED).

332. INCOME, BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.

Family services workers shall identify and, if necessary, apply on behalf of the child for income or benefits from one (1) or every available sources including Social Security, veterans' benefits, tribal benefits, or estates of deceased parents. The address of the payee shall be the regional Child Support Services office. (3-16-08)

333. ACCOUNTING AND REPORTING.

Regional Child Support Services shall account for the receipt of funds and develop reports showing how much money has been received and how it has been utilized. (3-16-08)

334. FORWARDING OF BENEFITS.

If the Department is receiving benefits and the child is returned to the home of the parents or relatives for a trial visit, Child Support Services shall be notified by memo from family services worker giving the name and address of the person to whom these benefits shall be forwarded. (3-16-08)

01. Return to Alternate Care. If the child returns to alternate care, the Department shall be notified immediately of the correct payee. (3-16-08)

02. Review After Six Months. If an alternative care placement continues for a period of six (6) months, a careful review must be initiated to determine if a change of payee must be accomplished. (3-16-08)

335. PERIODIC REVIEW OF BENEFITS FROM BUREAU OF INDIAN AFFAIRS (BIA).

Field offices must contact the Bureau of Indian Affairs and review periodically benefits that may be available to children in foster care. (3-16-08)

336. TREATMENT OF SURPLUS INCOME.

When a child has income that exceeds the cost of care, the surplus is deposited in a trust account in the child's name. (3-16-08)

337. TRUST ACCOUNT REPORTS.

A quarterly accounting report from the Department's Bureau of Budget and Management will be prepared and distributed to the Department's Bureau of Social Services and the regions showing the trust fund balance for each child. (3-16-08)

338. ACCESSING TRUST ACCOUNTS.

All requests for expenditures from the trust account must be an integral part of the child's care plan. Written documentation of all requests will be sent to the Department's Regional Social Services Supervisors for approval. Written justification for the request will be sent by the Department's Regional Social Services along with a Form 303. The Bureau of Social Services will give the Bureau of Budget and Management written authorization to release the funds. (3-16-08)

339. -- 350. (RESERVED).

IV. CONTENT - GENERAL GUIDELINES AND CONTENT RELATED ISSUES

A. NUMBERS

1. Singular and Plural

In administrative rules the singular number includes the plural and the plural number includes the singular. This means that phrases such as “person or persons” are unnecessary. The rule writer should not use the singular and the plural interchangeably either. To avoid ambiguity, the writer generally should use only the singular, regardless of any intent of the rule to encompass both.

In addition, a singular noun should generally be used in order to avoid the problem of whether the law applies separately to each member of a class or to the whole class.

2. Third Person

Always use the third person (a person, he) rather than the first person (I) or the second person (you).

B. GENDER

In all administrative rules, inclusive gender is inferred by a reference in IDAPA 44.01.01.005. The terms and references used in the masculine include the feminine and vice versa, as appropriate. Rule writers should not include inclusive gender provisions within their chapters of rules. As a result, such phrases as “he or she” or “his/her” are unnecessary. The only settings in which a gender-based distinction is appropriate are rules requiring sex differentiation, as in certain health rules. To the extent possible, the rule writer should use gender-neutral terms and try to avoid awkward, coined, or artificial terms.

C. PUNCTUATION

Punctuation is an important part of rule writing. It should be used properly and uniformly. Rule writers should know the principles of punctuation as well as they know the principles of construction and rule format. All rules should be written according to generally accepted standards of punctuation.

D. CAPITALIZATION

1. General

As with other punctuation, the rule writer should not overuse capitalization. The reason for this preference is historical. At one time type was set in hot lead, making it more expensive to set capital letters, and, as a result, a standard developed which minimized the use of capitalization. Since legal print is no longer set in hot lead, the reason for the “down style” has vanished, but the traditional capitalization principles are familiar and easier to read. To avoid the poor appearance of nonuniform capitalization, the rule writer should use the following standards.

2. Capitalize

The following should be capitalized:

- * all words of the major section heading;
- * the first letter of the first word in a sentence;
- * the first letters of the words in the first level subsection catchline;
- * months and days of the week;
- * the word or phrase “Idaho,” or “United States,” and words used in conjunction with them such as “United States Government”;
- * names of institutions such as “Idaho State Correctional Facility,” “Idaho State Library,” “Idaho State School and Hospital,” and “University of Idaho”;
- * full and official names of associations and organizations such as “American Dental Association” or “Idaho State Bar”;
- * full name of court and other government departments, division, offices, committees, and boards;
- * the word “Legislature” only when referring to the Idaho Legislature;
- * the terms “Senate,” “House,” “House of Representatives,” and “Congress” only when used to indicate either the Idaho Legislature or the Federal Congress;
- * names, proper derivatives of proper names (Indian, etc.), places, historic events, and holidays, as in “Coeur d’Alene Tribe,” “World War II,” and “Easter”;
- * official short titles and popular names of acts, bills, codes, and statutes;
- * the word “Part,” “IDAPA,” “Section,” “Subsection,” “Chapter,” “Title,” or other major subdivision designations of the administrative and statutory codes, when accompanied by the number of that subdivision, as in “IDAPA 44.01.01.100.02.b.,” and when used in conjunction with the name of another code compilation, as in Section 14 of the Federal Social Security Act”;
- * the names of programs such as “Medicare,” “Medicaid,” and “Social Security”;
- * specific references to the state constitution or the codes such as “Idaho Constitution,” “Idaho Code,” or “Idaho Administrative Code,” but not when general references are used such as “this code” or “this constitution”. Proper names of amendments should also be capitalized such as “Fourteenth Amendment” or “Gateway Amendment,” but the word “amendment” used in general references such as “the equal protection amendment” or “this amendment” should not be capitalized; and
- * specific funds and accounts such as the “General Fund” or the “Administrative Code Account”.

3. Do Not Capitalize

The following should not be capitalized:

- * generic political subdivisions, as in “state of Idaho,” or “county of Boise,” except when such terms follow the names of the subdivisions, as in “Boise County”;
- * titles of federal, state, local, and judicial officials, as in “governor,” “president,” “commissioner,” “representative,” “director,” “attorney general,” “judge,” “justice,” “chief justice,” or “treasurer,” unless used to refer to a particular person as in “Governor Kempthorne”;
- * the words “federal,” “state,” or “court” when not part of a proper name, except when “Supreme Court” refers to the Idaho Supreme Court; and
- * words merely indicating geographic location such as “northern Idaho.”

E. NUMBERS IN TEXT

1. General Numerical Text

When using numbers in the text of a rule, the number is spelled out, then followed by the written number in parenthesis, as set forth in the following examples:

Four (4) persons
fifteen (15) cats

The expression of age can be ambiguous at times. The phrase “older than 18 years old” could mean the day after the 18th birthday or the day of the 19th birthday.

Do Not Say:

*Applicants must be more than
 21 years old.*

Say:

*Applicants must be twenty-one (21)
 years of age or older.*

The term “old” and “of age” may be used interchangeably when referring to a person.

Always express money as in the following examples:

five million dollars (\$5,000,000)
twenty thousand dollars (\$20,000)

Use decimals only to express cents or tax-related figures such as tax rates, assessments, and valuations. In such cases decimals are preferred to fractions, although at times a fraction is the only way to express a tax rate. Writing out large fractions is not necessary if writing the fraction becomes cumbersome and confusing:

five dollars and eighty-five cents (\$5.85)
fifty cents (\$.50)
sales tax rate of five and eighty-five one-hundredths percent (5.85%)

Use commas in monetary amounts of four figures or more.

(\$5,000,000)
(\$1,500) NOT (\$1500)

Do not use zeroes after a decimal unless actual cents must be expressed.

(\$5) not (\$5.00)

When listing monetary amounts in a table format, however, if some of the amounts have decimals, use both decimals and zeroes for all amounts. However, it is not required to spell out the amount.

<i>\$5.00</i>
<i>\$10.13</i>
<i>\$201.00</i>
<i>\$2,100.25</i>

2. Time

Never use the phrase “o’clock.” Use “a.m.” and “p.m.” instead. Also use “noon” and “midnight”, not “12:00 a.m.” or “12:00 p.m.” Do not use a colon to express minutes unless actual minutes are to be indicated.

<i>9 a.m., not 9:00 a.m.</i>	<i>10:30 p.m.</i>
<i>10 p.m. not 10:00 p.m.</i>	<i>12 noon, not 12 a.m.</i>
<i>10:15 a.m.</i>	<i>12 midnight, not 12 p.m.</i>

F. REFERENCES TO IDAHO CODE, IDAHO ADMINISTRATIVE CODE, FEDERAL LAWS AND FEDERAL REGULATIONS

References to the codes and other laws are always written using arabic numerals.

- Title 67, Chapter 52, Idaho Code (citation to a specific title and chapter of the Idaho Code)
- Section 67-5201, Idaho Code (citation to a specific section of the Idaho Code)
- IDAPA 44.01.01.000 (citation to an administrative rule)
- 28 U.S.C. Section 105(a) (citation to the U.S. Code)
- 42 CFR 2.1 (citation to the Code of Federal Regulations)

G. ORDINAL NUMBERS - FIRST, SECOND, ETC.

When using the words “first,” “second,” and so on, the preceding arabic number is not necessary.

<u>Do Not Say:</u> <i>first (1st)</i>	<u>Say:</u> <i>first</i>
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H. SINGULAR VERB TO EXPRESS DOLLARS

References to dollars should be used with a singular verb.

Do Not Say:

a. *There are appropriated \$50,000 to this division.*

Say:

a. *There is appropriated fifty thousand dollars (\$50,000) to this division.*

I. FORMULAS

Mathematical, scientific, and chemical formulas should be described in text to avoid the risk of a corrupted formula being published. Formulas may become corrupted if they include special symbols, brackets, or underlining.

If formulas are necessary, it is possible to use symbols common to all systems (parentheses, slashes, hyphens, asterisks, and text) and not use other special symbols (brackets, braces, or underlining). Both of the following are acceptable.

$$\frac{175(\text{Grams contained U-235})}{350} + \frac{50(\text{Grams U-233})}{200} + \frac{50(\text{Grams Pu})}{200} > 1$$

OR: *(175(Grams contained U-235)/350) + (50(Grams U-233)/200) + (50(Grams Pu)/200 greater than 1*

Avoid special symbols as they may be lost when text is transferred between two different computer programs or systems. If approved by the Coordinator, a camera-ready copy or computer-generated graphic file of the formula may be submitted for purposes of placing the image into the rule.

Again, the use of “underlining” is reserved solely for the purpose of showing new language in proposed rules.

J. WORDS AND PHRASES

1. Exceptions

Whenever possible the rule writer should state a general principle or category directly rather than describing that principle or category by stating its exceptions.

Do Not Say:

a. *All persons except those eighteen (18) years old or older must..*

Say:

a. *Each person under eighteen (18) years old must...*

When exceptions are used they should be stated in simple terms. If only one or two exceptions apply, the general principle should be stated first and the exception should follow. The word “except” should be used to introduce the exception.

a. *This chapter applies to all persons except persons sixty-five (65) years or older.*

2. Conditions

When conditions are used they should also be stated in simple terms. If only one or two simple conditions apply, they should be stated first and the general principle should follow. The word “if”

should be used to introduce the condition.

- a. *If any person violates this rule, he is subject to prosecution.*

If there are many conditions or exceptions, they should be placed in an enumerated list at the end of the sentence after the general principle has been stated.

3. Limitations

Limitations should be avoided if possible. Generally, a rearrangement of sentences and wording will accomplish the writer's objective without the use of a limitation. However, if a limitation must be used, it should follow the general principle and be introduced with the word "but."

01. *Person. An individual, corporation, firm, and partnership, but does not include a public entity.*

4. Provisos

Provisos are archaic and usually result in unintelligible phrases. Expressions such as "provided that," "provided further that," and similar phrases should not be used. In most cases, rearranging the sentence will eliminate the need for the proviso. If the clause modified by a proviso is a complete thought, it should always be rewritten as a complete sentence. If it is an exception or condition, the above standards should apply.

5. Enumerations

The rule writer should enumerate or list exceptions or conditions in separate paragraphs whenever possible. This provides good access and readability. Enumerations should be preceded by introductory language stating the general principle set off with a colon. Each condition or exception should then be followed by a semicolon. The next to last item in the enumeration may be preceded by a conjunction. If the introductory language is sufficiently clear, a conjunction is not needed. However, insertion of a conjunction in this case is optional with the writer.

01. *Exceptions. This rule does not apply to any of the following:*
 - a. *Investment companies;*
 - b. *Securities brokers and dealers;*
 - c. *Insurance companies; or (denotes option)*
 - d. *Licensed attorneys.*

6. Official Titles

In referring to a public officer or agency, use the official and correct title of the person or agency. For example, do not call the director of the Division of Real Estate the "commissioner" unless defined in the chapter. If defined, the title is capitalized.

7. Specific Terms

Many terms and phrases are difficult in meaning, spelling, and usage to the writer. These include archaic legal language, or "legalese." Common problem terms are described here.

Never use "and/or" as it lacks precision. The rule writer should be able to determine which term is correct. If all items in an enumeration are to be taken together, they may be joined at the last two items by the conjunction "and." If the items are to be taken in the alternative, "or" is used. Even if terms are to be taken both together and in the alternative the "and/or" need not be used. The rule

writer should use “or both” or a similar phrase or simply make the introductory language clear.

Do Not Say:

Each corporation and/or bank must...

...red, white, and/or blue...

Say:

Each corporation or bank, or both, must...

...red, white, blue, or all of them...

“Shall” is imperative or mandatory but may also imply a future action. It is considered archaic and should not be used when “will” or “must” can be used to clearly indicate an obligation to act.

Do Not Say:

a. The director shall submit a budget.

Say:

a. The director will (must) submit a budget.

“May” is permissive or directory and should be used when granting a right, privilege, or power, or indication of discretion to act.

Do Not Say:

a. The director is authorized to issue orders.

Say:

a. The director may issue orders.

Whenever possible, an obligation or discretion to act should be stated positively. However, if a right, privilege, or power is abridged and the sentence contains a negative subject, “may not” or “no person may” should be used. This is preferable to “shall not” and “no person shall” since “no person shall” literally means that no one is required to act. A rule that includes this phrase negates the obligation, but not the permission to act. “No person may” also negates the permission to act and is, therefore, the stronger prohibition.

Since some courts on occasion have interpreted “shall” to mean “may” and vice versa, it is imperative that the writer give careful consideration to the context. If a problem of interpretation arises, add a sentence stating that action inconsistent with the provision is void.

Expressions such as “is authorized to,” “is empowered to,” “has the duty to,” “can,” or “the bureau intends that the officer will” should not be used. “Must” may be used if action is intended to be a condition precedent to the accrual of some right or privilege.

a. Notice of appeal must be filed within thirty (30) days.

Try to use “a,” “an,” “it,” “that,” “them,” “these,” “this,” or “those” instead of “said” and “same.” “Such” is not preferred but its use is sometimes necessary to modify a preceding term or phrase. “Such as” and “such a” may be used to introduce an example.

One way to avoid ambiguity in writing is to use the singular subject. The rule writer should use the singular articles “a,” “an,” and “the.” Sometimes the use of these articles creates an ambiguity, and, if this occurs, the writer should use the indefinite pronouns “any” and “each.” “Each” should be used if imposing an obligation to act, and “any” should be used if granting a right, privilege, or power. The term “every” should never be used.

Do Not Say:

The commissioner will issue a

Say:

The commissioner will issue a

certificate to an insurance company.

certificate to each insurance company.

The commissioner may issue a certificate to an insurance company.

The commissioner may issue a certificate to any insurance company.

If the subject is plural, the articles and indefinite pronouns need not be used. The terms, “all” and “some” should not be used. The singular expression is preferred.

Do Not Say:
All qualified employees must...

Say:
Qualified employees must...

The term “party” refers to a party in a legal action, and should not be used to denote a “person” who carries out an act or discharges a duty.

Do Not Say:
The qualified party must account for..

Say:
The qualified person must account for..

Phrases such as “pursuant to” and others like it have been used when identifying or making reference to other provisions of the law. All of the following are acceptable but the rule writer should be consistent in using them.

*pursuant to . . .
as provided in . . .
under . . .*

*prescribed in . . .
as described in . . .*

Use of the phrase “the provisions of” is unnecessary and should not be used.

The terms “that” and “which” are not interchangeable. The choice between them is determined by the type of clause that follows them. “That” is used to introduce a restrictive clause, or a clause that provides information necessary for full comprehension of the sentence.

Any funds that are not restricted will lapse.

A restrictive clause is never set off by commas.

“Which” is used to introduce a nonrestrictive clause, or a clause that provides nonessential or parenthetical information. A nonrestrictive clause is usually set off by commas.

a. The division, which is responsible for all licenses, will provide . . .

Use “if” not “when” to express a condition. Use “when” only as a reference to time.

Do Not Say:
If the complaint is filed . . .

Say:
When the complaint is filed . . .

When the applicant is qualified . . .

If the applicant is qualified . . .

The words “compose” and “comprise” both involve the idea of containing, embracing, comprehending, or surrounding. “Compose” also means making or forming.

The board will be composed of ten (10) members.

“Comprise” suggests including or containing. The whole comprises the parts, the parts do not comprise the whole. “Comprised of” is a wordy expression and should not be used.

The board comprises ten (10) members.

The phrase “**rules and regulations**” is redundant in Idaho. “**Rules**” are promulgated by administrative agencies and are referred to as such in official publications. These agencies do not make “regulations.” The rule writer, when referring to rules made by Idaho agencies, should only use the term “rules.” The term “regulations” should be used in reference to federal regulations.

K. CITATIONS TO OTHER RULES OR CODES

When citing another chapter of rules (external citation), use the IDAPA, Title, and Chapter number; then include the name of the rules.

Example: IDAPA 13.04.01, “Rules Governing Licensing,”...

When citing a section, subsection, paragraph, or subparagraph from another chapter of rules, always use the IDAPA, Title, Chapter, then include the name of the rules, and section or subsection number. A period separates each number.

Example: IDAPA 13.04.01, “Rules Governing Licensing,” Section 100...

In most cases, you will not want to cite further than a section number. It is very common for subsection, paragraph, or subparagraph numbers to change often. Therefore, if you cite a subsection, paragraph, or subparagraph number, every time the subdivision number is amended, you will be responsible for amending the rule to change the cite.

When citing sections, subsections, paragraphs, or subparagraphs within the same chapter of rules (internal citation), it is not necessary to use the the terms “IDAPA,” “Title,” and “Chapter.”

Example:
Section 100
Subsection 100.01
Paragraph 100.01.a.
Subparagraph 100.01.a.i.

Notice that a period is used when the citation ends in an alphabetic character (100.01.a. or 100.01.a.i.). This insures that the character will be separated from the text that follows. A period is not required if the citation ends with a number (100.01). Also, the terms “**Section,**” “**Subsection,**” “**Paragraph,**” and “**Subparagraph**” are always capitalized when used in a rule.

To further clarify an internal citation, the rule writer **may** use the phrase “of these rules”.

Example: Paragraph 100.01.a. of these rules

V. INCORPORATION BY REFERENCE

Often times government programs that are statutorily authorized by the Idaho Legislature and administered and implemented by state agencies through administrative rules are also subject to additional authority or mandates that come from outside of state government. In order to implement a program that fully complies with all governing statutory or regulatory requirements an agency may need to include these additional provisions into its rule. Some programs may require the inclusion of uniform standards, codes, or regulations of the federal government, another state government, another state agency, or some nationally recognized public or private organization or association. The legal process for making these external materials part of a state agency rule is known as “incorporation by reference.”

In most cases these standards, codes, or regulations are readily available to the public through various publications. The Code of Federal Regulations (CFR) or national trade organization publications are examples of how these are disseminated to the public and most are available and accessible through the Internet. Generally, it is cumbersome and difficult to republish all or part of the text of these regulations, standards, or uniform codes in agency rules. Therefore, the APA (Section 67-5229, Idaho Code) permits agencies to incorporate by reference standards, codes, or rules when it “...would be **unduly cumbersome, expensive, or otherwise inexpedient...**” to do so without republishing the text. However, the APA is very explicit on the type of documents that can be incorporated by reference.

In other instances, an agency may need charts, diagrams, graphs, maps, or other descriptive materials to illustrate a regulatory requirement. In each case, the incorporation or adoption of the material by reference saves space, eliminates redundancy, and can avoid costly errors should there be a discrepancy between the rule and the original document.

In Idaho manuals or guidelines that are statutorily authorized to be created by an agency may be incorporated by reference. If incorporated by reference into the rule, the manual or guideline is subject to legislative review and approval. The statutory authority that allows a document produced by a state agency to be incorporated by reference into a rule also subjects the incorporated document to the same degree of review for approval as the administrative rule itself. This means that all or part of the incorporated material may be rejected by the legislature and made null and void and of no force and effect.

A. HOW TO “INCORPORATE BY REFERENCE” A DOCUMENT INTO A RULE

In considering whether to incorporate by reference, the rule writer must understand that the materials incorporated must be maintained in their incorporated condition. If incorporated by reference the rule must include information on how and where the document can be obtained or electronically accessed. **Pursuant to Section 67-5229(2)(b), Idaho Code, if otherwise unavailable, one (1) copy of the incorporated material must be provided to the Idaho Supreme Court Law Library.**

The Rules of the Administrative Rules Coordinator require that agencies include a section in each rule that lists documents that are or may be adopted through the incorporation by reference

provision of the APA. The incorporated material must be identified with specificity and must include the date when the code, standard, or rule was published, approved, or became effective and how a copy of the document may be obtained. The following is an example of how a properly promulgated rule would appear in the Code using the incorporation by reference provision:

004. INCORPORATION BY REFERENCE.

- 01. Incorporated Document.** IDAPA 44.01.01 adopts and incorporates by reference the full text of the requirements found on pages 10 through 598, “2006 Standards for Grammar, Style, Numbering and Structure, 5th Edition,” published by the National Association of Administrative Codes and Registers. (7-1-06)
- 02. Availability of Referenced Documents.** Copies of the “2006 Standards for Grammar, Style, Numbering and Structure, 5th Edition,” are available at the following locations: (7-1-06)

 - a. NAACR, 1400 Pennsylvania Ave, Washington, D.C. 90016-1400. (7-1-06)
 - b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051. (7-1-06)
 - c. Web address: www.naacr.org/ACR/index/standard.htm (7-1-06)

B. ADDITIONAL INFORMATION

The APA requires all documents that are incorporated by reference to be date and edition specific and prohibits the incorporation of future materials. For example, “...*this rule incorporates the 2006 edition of the Uniform Commercial Code and all future editions, as amended*” is not allowed. Rule writers should be aware that the courts have invalidated prospective incorporations by reference for this reason. This means that a document that is incorporated by reference must be date and edition specific and must include the date when the code, standard or rule was published, approved or became effective. This disallows any open-ended incorporation statements that do not refer to a specific edition or source to which the public may refer. And, if a agency subsequently wishes to incorporate amendments to previously incorporated material, it must comply with the rulemaking procedures of the APA.

If the validity of incorporating certain material into rule is in question, the agency’s legal counsel or the analysts in the Legislative Services Office can assist in determining whether or not the material can legally be incorporated. This should be done to ensure that the legislature has no objection to the incorporation of the material in question. This is especially true of those documents produced by the agency itself that are subject to legislative scrutiny. Unless prohibited by other provisions of law, such as provisions that protect federal regulations or the standards or codes of a nationally recognized organization, all incorporated material is subject to legislative review as allowed under Section 67-5291, Idaho Code.

Example - Notice of Negotiated Rulemaking

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901 (OAR will assign)

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

MEETING SCHEDULE: A public meeting(s) on the negotiated rulemaking will be held as follows:

(If available, include the date, time, and location of the any scheduled hearing(s).)

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking must do the following:

(Give an explanation of how a person may participate in the process. This may include allowing requests to give oral presentation or additional meetings, submission of written comments, etc. The agency may use its discretion on how this may be done.)

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

(Include a descriptive summary of the subject matter to be addressed in the proposed rulemaking)

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule *(if available)*, contact *(include the appropriate name and phone number)*.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before *(include the date by which comments must be received)*.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Notice of Proposed Rulemaking With No Public Hearings

IDAPA 44 – OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901 (OAR will assign)

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(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any specific section(s) of the Idaho Code or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

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 *(include a date that is at least 14 days after publication of the Bulletin)*.

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:

(Include a descriptive summary of the proposed changes)

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

(If a fee is being imposed or increased by this rulemaking, include a descriptive summary of the fee involved and cite the specific statute authorizing the fee.)

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, *(include the volume number and page numbers)*.

OR Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because *(include an explanation as to why it was not feasible to conduct negotiated rulemaking)*.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact *(include the appropriate name and phone number)*.

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 *(this date must be at least 21 days after the publication date of the Administrative Bulletin)*.

DATED this *(include the date the document is signed)*.

Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax

Example - Notice of Proposed Rulemaking With Scheduled Public Hearing(s)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901 (OAR will assign)

**NOTICE OF RULEMAKING - PROPOSED RULE
(with scheduled Public Hearings)**

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(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any specific section(s) of the Idaho Code or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

(Include the following information for the scheduled public hearing:)

DATE - TIME - LOCATION

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:

(Include a descriptive summary of the nature of the proposed rulemaking)

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

(If a fee is being imposed or increased by this rulemaking, include descriptive summary of the fee involved and cite the specific statute authorizing the fee.)

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 as a result of this rulemaking:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin, *(include the volume number and page numbers)*.

OR Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because *(include an explanation as to why it was not feasible to conduct negotiated rulemaking)*.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact *(include the appropriate name and phone number)*.

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 *(this date must be at least 21 days after the publication date of the Administrative Bulletin)*.

DATED this *(include the date the document is signed)*.

Name, Title
Agency/Division
Physical Address - Mailing Address
City, State and Zip
phone, fax

Example - Notice of Temporary/Proposed Rulemaking With No Public Hearings

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901 (OAR will assign)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is *(include effective date of temporary rule)*.

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(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any specific section(s) of the Idaho Code or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

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 *(include a date that is at least fourteen (14) days after publication of the Bulletin)*.

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: *(Include a descriptive summary of the proposed changes)*

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) *(include appropriate section(s) a, b, and/or c)*, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: *(Include a statement of justification for adopting the temporary rule.)*

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: *(If applicable, include a descriptive summary of the fee involved and cite the specific statute authorizing the fee)*

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: *(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)*

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin, *(include the volume number and page numbers)*.

OR Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because *(include an explanation as to why it was not feasible to conduct negotiated rulemaking)*.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact *(include the appropriate name and phone number)*.

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 *(this date must be at least twenty-one (21) days after the publication of the Administrative Bulletin)*.

DATED this *(include the date the document is signed)*

Name, Title
Agency/Division

Physical Address
Mailing Address

City, State and Zip
Phone, fax

Example - Notice of Temporary and Proposed Rule With Scheduled Public Hearings

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901 (OAR will assign)

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE
(with Scheduled Public Hearings)**

EFFECTIVE DATE: The effective date of the temporary rule is *(include effective date of temporary rule)*.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any specific section(s) of the Idaho Code or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:
(Include the following information for the scheduled public hearing:)

DATE - TIME - LOCATION

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: *(Include a descriptive summary of the proposed changes)*

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) *(include appropriate section(s) a, b, and/or c)*, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: *(Include a statement of justification for adopting the temporary rule)*

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:
(If applicable, include a descriptive summary of the fee involved and cite the specific statute authorizing the fee)

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:
(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin, *(include the volume number and page numbers)*. **OR** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because *(include an explanation as to why it was not feasible to conduct negotiated rulemaking)*.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact *(include the appropriate name and phone number)*.

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 *(this date must be at least twenty-one (21) days after the publication of the Administrative Bulletin)*.

DATED this *(include the date the document is signed)*

Name, Title
Agency/Division

Physical Address
Mailing Address

City, State and Zip
Phone, fax

Example - Notice of Adoption of Temporary Rulemaking

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901 (OAR will assign)

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is *(include effective date of temporary rule)*.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

(Include a statement of finding and its supporting reasons for adopting the temporary rule.)

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

(Include a statement of justification for adopting the temporary rule.)

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

(If applicable, include a descriptive summary of the fee involved and cite the specific statute authorizing the fee.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is adopted and signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Pending Rule Notice With No Changes to Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901

(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, *(OR such other date specified by agency)*, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

(Use the following statement only if no changes have been made to the original proposed rule text.)

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, pages *(include the page numbers)*.

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Pending Rule Notice With Changes to Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0902

(Use the Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, ***(OR such other date specified by agency)***, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

(Include a brief statement for adopting the pending rule and provide a brief description of any changes being made to the pending rule that differ from the proposed text.)

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the Vol. number)*, pages *(include the page numbers)*.

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Pending & Temporary Rule With No Change to the Proposed Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901

(Include the Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING -

ADOPTION OF PENDING RULE AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is *(include effective date here)*. The pending rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, *(OR such other date specified by agency)*, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule.

(Include a statement of the finding and its supporting reasons for adopting the temporary rule and use the following statement only if no changes have been made to the original proposed rule text.)

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, pages *(include the page numbers)*.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) *(include appropriate section(s) a, b, and/or c)*, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s):

(Include a statement of justification for adopting the temporary rule)

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name, Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Pending & Temporary Rule Notice with Changes to Proposed Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0902

(Include the Docket Number Previously Assigned to this Rulemaking)

NOTICE OF RULEMAKING: ADOPTION OF PENDING RULE AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is *(include effective date here)*. This pending rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, **OR** *such other date specified by agency*, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting a temporary rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule.

(Include a statement of the finding and its supporting reasons for adopting the temporary rule and for adopting the pending rule and provide a brief description of any changes being made to the pending rule that differ from the proposed text.)

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice and includes changes made to the pending rule. The text of the pending has been modified in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, pages *(include the page numbers)*.

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

(Include a statement of justification for adopting the temporary rule)

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name, Title
Agency/Division
Physical Address - Mailing Address
City, State and Zip
Phone, fax)*

Example - Pending Fee Rule Notice With No Changes to Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901

(Use the Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

(Use the following statement only if no changes have been made to the original proposed rule text.)

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, pages *(include the page numbers)*.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section *(cite specific statute authorizing the fee)*, Idaho Code.

(Include a descriptive summary of the fee involved)

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Pending Fee Rule Notice With Changes to Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0902

(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

(Include a brief statement for adopting the pending rule and provide a brief description of any changes being made to the pending rule that differ from the proposed text.)

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, pages *(include the page numbers)*.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section *(cite specific statute authorizing the fee)*, Idaho Code.

(Include a descriptive summary of the fee involved)

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Pending Fee Rule and Temporary Rule Notice With No Changes to the Proposed Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901

(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING: ADOPTION OF PENDING FEE RULE AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is *(include effective date here)*. This pending rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and temporary rule. The action is authorized pursuant to Section(s) *(include the specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule. No changes have been made to the pending rule that differs from the proposed rule text.

(Include a statement of the finding and its supporting reasons for adopting the temporary rule and use the following statement only if no changes have been made to the original proposed rule text.)

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, pages *(include the page numbers)*.

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

(Include a statement of justification for adopting the temporary rule)

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

(Include a descriptive summary of the fee involved and cite the specific statute authorizing the fee)

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name, Title
Agency/Division
Physical Address/Mailing Address
City, State and Zip
phone, fax)*

Example - Pending Fee and Temporary Rule With Changes to the Proposed Text

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0902 (Use previous Docket No.)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is *(include effective date here)*. This pending rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and temporary rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any change.

(Include a statement of the finding and its supporting reasons for adopting the temporary rule and a brief statement for adopting the pending rule and provide a brief description of any changes being made to the pending rule that differ from the proposed text.)

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, pages *(include the page numbers)*.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) *(include appropriate section(s) a, b, and/or c)*, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s):

(Include a statement of justification for adopting the temporary rule)

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed pursuant to Section *(cite specific statute authorizing the fee)*, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

(Include a descriptive summary of the fee involved)

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes that are being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

<i>Name, Title Agency/Division</i>	<i>Physical Address Mailing Address</i>	<i>City, State and Zip phone, fax</i>
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Example - Pending Fee Rule and Amendment to Temporary Rule Notice

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0902

(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is *(include effective date here)*. This pending rule has been adopted by the agency and is now pending review by the *(year)* Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, **(OR such other date specified by agency)**, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule and amended a temporary rule. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

(Include a brief statement for adopting the pending rule and amending the temporary rule and provide a brief description of any changes being made to the pending rule that differ from the proposed text.)

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the *(Department/Board/Commission)* amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the volume number)*, page(s) *(include the page numbers)*.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed pursuant to Section *(cite specific statute authorizing the fee)*, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

(Include a descriptive summary of the fee involved.)

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

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:

(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

<i>Name, Title</i>	<i>Physical Address</i>	<i>City, State and Zip</i>
<i>Agency/Division</i>	<i>Mailing Address</i>	<i>phone, fax</i>

Example - Notice of Public Hearing with No Additional Comment Period

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901
(OAR will assign if not already assigned)

NOTICE OF PUBLIC HEARING

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

(Include the following information for the scheduled public hearing:)

DATE - TIME - LOCATION

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 summary of this action is found in Idaho Administrative Bulletin Vol. *(volume number)*, dated *(date of bulletin publication)*, pages *(page numbers)*.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking or the hearing schedule, contact *(include the appropriate name, phone number, and E-mail address)*.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Notice of Public Hearing with Extended Comment Period

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901
(OAR will assign if not already assigned)

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Section(s) *(include the specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

(Include the following information for the scheduled public hearing:)

DATE - TIME - LOCATION

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 summary of this action is found in Idaho Administrative Bulletin Vol. *(volume number)*, dated *(date of bulletin publication)*, pages *(page numbers)*.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact *(include the appropriate name and phone number)*.

SUBMISSION OF WRITTEN COMMENTS: The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking. All written comments must be directed to the undersigned and must be delivered on or before *(this date)*.

Written comments may also be submitted at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Notice of Final Rulemaking

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901

(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. *(include the Docket number)*. This agency action for this final rulemaking is authorized pursuant to Section *(include the agency's specific statutory authority for rulemaking)*, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the pending rule and text of the final rule with an explanation for any changes.

(Include a descriptive summary of the any action taken affecting this rulemaking and include the number of any applicable legislative concurrent resolution.)

- See example text below for prefacing descriptive summary language.

(Example language):

Pursuant to (Senate or House) Concurrent Resolution No. (include resolution number), Docket No. (include docket number) is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following changes are being made to the final rule:

The original text of the proposed rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the Vol. number)*, page(s) *(include the page number(s))*. The pending rule was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, Vol. *(include the Vol. number)*, page(s) *(include the page numbers)*.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact *(contact name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Notice of Rescission of Temporary Rule

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901

(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any citation to a federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for rescinding the temporary rule.

(Include a descriptive summary stating the reasons for the rescission of the temporary rule.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the rescission of this temporary rule, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

Example - Notice of Vacation of Proposed Rulemaking

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0901

(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the rulemaking previously initiated under this docket. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for vacating the proposed rulemaking:

The proposed rule was published in the *(Month)* #, 20__ Administrative Bulletin, Volume #-#, page(s) _____. This Notice of Rulemaking hereby vacates the proposed rulemaking for the following reasons:

(Include a descriptive summary stating the reasons why the agency is vacating the rulemaking.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of rulemaking, contact *(include the appropriate name and phone number)*.

DATED this *(include the date the document is signed)*.

*(Name
Title
Agency/Division
Physical Address
Mailing Address
City, State and Zip
phone, fax)*

SELECTED PROVISIONS OF THE IDAHO ADMINISTRATIVE PROCEDURE ACT

TITLE 67 STATE GOVERNMENT AND STATE AFFAIRS CHAPTER 52 IDAHO ADMINISTRATIVE PROCEDURE ACT

67-5201. DEFINITIONS.

As used in this act:

- (1) “Administrative code” means the Idaho administrative code established in this chapter.
- (2) “Agency” means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.
- (3) “Agency action” means:
 - (a) the whole or part of a rule or order;
 - (b) the failure to issue a rule or order; or
 - (c) an agency's performance of, or failure to perform, any duty placed on it by law.
- (4) “Agency head” means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.
- (5) “Bulletin” means the Idaho administrative bulletin established in this chapter.
- (6) “Contested case” means a proceeding which results in the issuance of an order.
- (7) “Coordinator” means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.
- (8) “Document” means any executive order, notice, rule or statement of policy of an agency.
- (9) “Final rule” means a rule that has been adopted by an agency under the regular rulemaking process and is in effect.
- (10) “License” means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.
- (11) “Official text” means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.
- (12) “Order” means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.
- (13) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (14) “Pending rule” means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review.
- (15) “Person” means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.
- (16) “Proposed rule” means a rule published in the bulletin as provided in section 67-5221, Idaho Code.
- (17) “Provision of law” means the whole or a part of the state or federal constitution, or of any state or federal:
 - (a) statute; or
 - (b) rule or decision of court.

(18) "Publish" means to bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law.

(19) "Rule" means the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

(a) law or policy, or
(b) the procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:

(i) statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

(ii) declaratory rulings issued pursuant to section 67-5232, Idaho Code; or

(iii) intra-agency memoranda; or

(iv) any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(20) "Rulemaking" means the process for formulation, adoption, amendment or repeal of a rule.

(21) "Standard" means a manual, guideline, criterion, specification, requirement, measurement or other authoritative principle providing a model or pattern in comparison with which the correctness or appropriateness of specified actions, practices or procedures may be determined.

(22) "Submitted for review" means that a rule has been provided to the legislature for review at a regular or special legislative session as provided in section 67-5291, Idaho Code.

(23) "Temporary rule" means a rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in section 67-5226, Idaho Code.

67-5202. OFFICE OF ADMINISTRATIVE RULES COORDINATOR.

(1) There is hereby established the office of administrative rules coordinator in the department of administration. The coordinator shall be a nonclassified employee and shall be appointed by and serve at the pleasure of the director of the department of administration. All other employees of the office of administrative rules employed on July 1, 1996, shall be classified employees, but upon their termination their positions and any positions vacant upon July 1, 1996 shall be nonclassified positions and any persons employed to fill positions in the office of administrative rules thereafter shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(2) The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.

(3) The coordinator shall receive all notices and rules required in this chapter to be published in the bulletin or the administrative code. The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all agencies. The coordinator shall review all submitted rules for style, form, and numbering, and may return a rule that is not in proper style, form, or number.

67-5203. PUBLICATION OF ADMINISTRATIVE BULLETIN.

(1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published in the bulletin. The bulletin shall be published by the administrative rules coordinator not less frequently than the first Wednesday of each calendar month, but not more frequently than every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

- (a) all executive orders of the governor;
 - (b) agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and pending rules, together with any explanatory material supplied by the agency;
 - (c) all agency documents required by law to be published in the bulletin; and
 - (d) any legislative documents affecting a final agency rule.
- (5) The text of all documents published in the bulletin shall be the official text of that document until the document has been published in the administrative code. Judicial notice shall be taken of all documents published in the bulletin.
- (6) The coordinator shall provide a process for access to the contents of the bulletin and to the administrative code by electronic means.

67-5204. PUBLICATION OF ADMINISTRATIVE CODE.

- (1) The administrative rules coordinator shall annually publish a publication to be known as the "Idaho Administrative Code."
- (2) The administrative code shall be a codification of:
- (a) all executive orders of the governor that have been published in the bulletin and have not been rescinded;
 - (b) the text of all final rules;
 - (c) any legislative documents affecting a final agency rule; and
 - (d) all documents required by law to be published in the administrative code.
- (3) The text of all documents published in the administrative code shall be the official text of that document. Judicial notice shall be taken of all documents published in the administrative code.

67-5205. FORMAT -- COSTS -- DISTRIBUTION -- FUNDS.

- (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual printed pamphlet copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.
- (2) The prices to be charged for individual copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, for reprints and bound Vol.s thereof and for pamphlet rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state, and the number of copies which shall be distributed free for official use, in addition to those free copies required to be as provided in this section, shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state. Free copies shall be distributed by the coordinator, as follows:
- (a) One (1) to each county clerk for the use of the county law library.
 - (b) One (1) each to the senate and the house of representatives.
 - (c) One (1) to the attorney general.
 - (d) One (1) to the legislative services office.
 - (e) One (1) each to the state universities and colleges, and one (1) to each community college.
 - (f) One (1) to the state law library.
 - (g) One (1) to the state library.
 - (h) One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, Albertson College Library, Ricks College Library and Twin Falls Public Library. In addition to those free copies required to be distributed by this section, the coordinator shall provide to the legislature free copies of all rules subject

to review by the legislature pursuant to section 67-5291, Idaho Code, and may distribute other free copies for official use.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for Vol. discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(4) There is hereby created in the state treasury the administrative code fund. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and for providing electronic access, shall be deposited in the fund. All agencies which have any material published in the bulletin, administrative code or supplements thereto, or newspapers, are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of publication and distribution of such material. All moneys placed in the fund may be appropriated to the coordinator for the administration of the provisions of this chapter, and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter. The coordinator shall charge an annual fee to each participating agency for each page published in the administrative code not to exceed fifty-six dollars (\$56.00) per page. In addition, the coordinator shall charge a fee to each participating agency for each page published in the bulletin not to exceed sixty-one dollars (\$61.00) per page. A fee per page may be charged even though less than a full page of publication is required, and each participating agency shall promptly pay into the administrative code fund such charge.

67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE ACT.

(1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:

- (a) establish a uniform numbering system applicable to rules adopted by all agencies;
- (b) establish a uniform style and format applicable to rules adopted by all agencies;
- (c) establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;
- (d) establish a uniform indexing system for agency orders; and
- (e) include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.

(2) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules of procedure appropriate for use by as many agencies as possible. The rules shall deal with all general functions and duties performed in common by several agencies.

(3) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5220 through 67-5232, Idaho Code. The rules shall specify:

- (a) the form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;
- (b) procedures for the creation of a record of comments received at any oral presentation;
- (c) the standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;
- (d) the form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;
- (e) procedures to facilitate negotiated rulemaking;
- (f) the form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and

(g) such other provisions as may be necessary or useful.

(4) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5240 through 67-5255, Idaho Code. The rules shall specify:

- (a) form and content to be employed in giving notice of a contested case;
- (b) procedures and standards required for intervention in a contested case;
- (c) procedures for prehearing conferences;
- (d) format for pleadings, briefs, and motions;
- (e) the method by which service shall be made;
- (f) procedures for the issuance of subpoenas, discovery orders, and protective orders if authorized

by other provisions of law;

- (g) qualifications for persons seeking to act as a hearing officer;
- (h) qualifications for persons seeking to act as a representative for parties to contested cases;
- (i) procedures to facilitate informal settlement of matters;
- (j) procedures for placing ex parte contacts on the record; and
- (k) such other provisions as may be necessary or useful.

(5) (a) After July 1, 1993, the rules promulgated by the attorney general under this section shall apply to all agencies that do not affirmatively promulgate alternative procedures after the promulgation of the rules by the attorney general. The rules promulgated by the attorney general shall supersede the procedural rules of any agency in effect on June 30, 1993, unless that agency promulgates its own procedures as provided in paragraph (b) of this subsection.

(b) After July 1, 1993, an agency that promulgates its own procedures shall include in the rule adopting its own procedures a finding that states the reasons why the relevant portion of the attorney general's rules were inapplicable to the agency under the circumstances.

67-5207. SHORT TITLE.

This chapter may be cited as the "Idaho Administrative Procedure Act."

67-5220. NOTICE OF INTENT TO PROMULGATE RULES.

(1) An agency may publish in the bulletin a notice of intent to promulgate a rule. The notice shall contain a brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking, and shall include the purpose of the rule, the statutory authority for the rulemaking, citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking, and the principal issues involved. The notice shall identify an individual to whom comments on the proposal may be sent.

(2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged to proceed through such informal rulemaking whenever it is feasible to do so.

67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING.

(1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

(a) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;

(b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

(c) 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 when the pending rule will become

effective; provided, however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule;

(d) the text of the proposed rule prepared in legislative format;
(e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

(f) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

(g) the manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code; and

(h) the deadline for public comments on the proposed rule.

(2) (a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The form of the notice shall be substantially as follows: typefaces used shall measure greater than seven (7) points, and space width shall not be less than two (2) newspaper columns. The content of the notice shall be substantially as follows:

A prominent bold typeface heading designed to alert readers to the rules and information contained in the notice. The notice shall include the agency name and address, rule number, rule subject matter as provided in paragraph (1)(b) of this section, and the comment deadline. A brief statement in a prominent bold typeface that informs citizens where they can view the administrative bulletin in hard copy or electronic form shall be included.

(b) The coordinator shall cause the notice required in paragraph (a) of this subsection to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published. The coordinator is authorized to negotiate a rate or rates with any or all newspapers publishing these notices which will provide adequate exposure to the notices by the least expensive means. For the purposes of this section, the provisions of section 60-105, Idaho Code, shall not apply.

67-5222. PUBLIC PARTICIPATION.

(1) Prior to the adoption, amendment, or repeal of a rule, the agency shall afford all interested persons reasonable opportunity to submit data, views and arguments, orally or in writing. The agency shall receive comments for not less than twenty-one (21) days after the date of publication of the notice of proposed rulemaking in the bulletin.

(2) When promulgating substantive rules, the agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or an agency. The request must be made in writing and be within fourteen (14) days of the date of publication of the notice of proposed rulemaking in the bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later. An opportunity for oral presentation need not be provided when the agency has no discretion as to the substantive content of a proposed rule because the proposed rule is intended solely to comply:

(a) with a controlling judicial decision or court order; or

(b) with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule.

67-5223. INTERIM LEGISLATIVE REVIEW -- LEGISLATIVE HEARINGS -- STATEMENT OF ECONOMIC IMPACT.

(1) After notice of proposed rulemaking is filed with the coordinator, the coordinator, after making technical corrections as authorized in section 67-5202, Idaho Code, shall provide the notice, accompanied by the full text of the rule under consideration in legislative format, as well as a statement of the substance of the intended action, to the director of legislative services. If the proposed rulemaking is based upon a requirement of federal law or regulation, a copy of that specific federal law or regulation shall accompany the submission to the director of legislative services. The director of legislative services shall analyze and refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code.

(2) An agency shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a proposed rule if the germane joint subcommittee files a written request with the agency for such a statement. The statement shall contain an evaluation of the costs and benefits of the rule, including any health, safety, or welfare costs and benefits. The adequacy of the contents of the statement of economic impact is not subject to judicial review.

67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE.

(1) Prior to the adoption, amendment, or repeal of a rule, the agency shall consider fully all written and oral submissions respecting the proposed rule.

(2) Subject to the provisions of subsection (3) of this section, the agency shall publish the text of a pending rule and a notice of adoption of the pending rule in the bulletin. The notice of adoption of the pending rule shall consist of the agency shall publish a concise explanatory statement containing:

(a) reasons for adopting the rule;

(b) a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes;

(c) the date on which the pending rule will become final and effective, as provided in subsection (5) of this section, and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;

(d) an identification of any portion of the pending rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;

(e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and

(f) 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 when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

(3) With the permission of the coordinator, the agency need not publish in full the text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the Vol. of the bulletin where the text is available and note all changes that have been made.

(4) An agency shall not publish a pending rule until at least seven (7) days after the close of all public comment.

(5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

(b) When the legislature approves, amends or modifies a pending rule pursuant to section 67-

5291, Idaho Code, the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution.

(c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved, amended or modified by concurrent resolution.

(6) Each agency shall provide the administrative rules coordinator with a description of any pending rule or portion thereof imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. The administrative rules coordinator shall provide the legislature with a compilation of the descriptions provided by the agencies.

(7) At the conclusion of the legislative session or as soon thereafter as is practicable, the coordinator shall publish the date upon which the legislature adjourned sine die and rules became effective and a list of final rules becoming effective on a different date, as provided in section 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided in section 67-5226(3), Idaho Code.

67-5225. RULEMAKING RECORD.

(1) Prior to the adoption, amendment, or repeal of a rule, the agency shall prepare a rulemaking record. The record shall be maintained in the main offices of the agency.

(2) The rulemaking record shall be available for public inspection and copying. The rulemaking record must contain:

- (a) copies of all publications in the bulletin;
- (b) all written petitions, submissions, and comments received by the agency and the agency's response to those petitions, submissions, and comments;
- (c) all written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule;
- (d) a record of any oral presentations, any transcriptions of oral presentations, and any memorandum prepared by a presiding officer summarizing the contents of the presentations; and
- (e) any other materials or documents prepared in conjunction with the rulemaking.

(3) Except as otherwise required by a provision of law, the rulemaking record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

(4) The record required in this section shall be maintained by the agency for a period of not less than two (2) years after the effective date of the rule.

67-5226. TEMPORARY RULES.

(1) If the governor finds that:

- (a) protection of the public health, safety, or welfare; or
- (b) compliance with deadlines in amendments to governing law or federal programs; or
- (c) conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule, except as otherwise provided in section 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

(2) A rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved, amended or modified by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective as provided in section 67-5224(5), Idaho Code.

(4) Temporary rules shall be published in the first available issue of the bulletin.

(5) Temporary rules are not subject to the requirements of section 67-5223, Idaho Code, provided that the agency adopting the temporary rule sends to the director of legislative services a copy of the temporary rule at the same time the agency sends the temporary rule to the office of the administrative rules coordinator for publication in the bulletin.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

67-5227. VARIANCE BETWEEN PENDING RULE AND PROPOSED RULE.

An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject of agency action and were reasonably able from that notification to determine whether their interests could be affected by agency action on that subject.

67-5228. EXEMPTION FROM REGULAR RULEMAKING PROCEDURES.

An agency may amend a pending rule to correct typographical errors, transcription errors, or clerical errors without compliance with regular rulemaking procedures when the amendments are approved by the coordinator. Such amendments become incorporated in the pending rule upon publication in the bulletin.

67-5229. INCORPORATION BY REFERENCE.

(1) If the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient an agency may incorporate by reference in its rules and without republication of the incorporated material in full, all or any part of:

- (a) A code, standard or rule adopted by an agency of the United States;
- (b) A code, standard or rule adopted by any nationally recognized organization or association;
- (c) A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or

(d) A final rule of a state agency; provided however, that a state agency shall not adopt a temporary rule incorporating by reference a rule of that agency that is being or has been repealed unless the rule providing for the incorporation has been reviewed and approved by the legislature.

(2) The agency shall, as part of the rulemaking

(a) Note where copies of the incorporated material may be obtained or electronically accessed; and

(b) If otherwise unavailable, provide one (1) copy of the incorporated material to the Idaho supreme court law library.

(3) The incorporated material shall be identified with specificity and shall include the date when the code, standard or rule was published, approved or became effective. If the agency subsequently wishes to adopt amendments to previously incorporated material, it shall comply with the rulemaking procedures of this chapter.

(4) Unless prohibited by other provisions of law, the incorporated material is subject to legislative review in accordance with the provisions of section 67-5291, Idaho Code, and shall have the same force and effect as a rule.

67-5230. PETITION FOR ADOPTION OF RULES.

(1) Any person may petition an agency requesting the adoption, amendment, or repeal of a rule. The agency shall either:

(a) deny the petition in writing, stating its reasons for the denial; or

(b) initiate rulemaking proceedings in accordance with this chapter. The agency shall deny the petition or initiate rulemaking proceedings in accordance with this chapter within twenty-eight (28) days

after submission of the petition, unless the agency's rules are adopted by a multimember agency, board, or commission whose members are not full-time officers or employees of the state, in which case the agency shall take action on the petition no later than the first regularly scheduled meeting of that board or commission that takes place seven (7) or more days after submission of the petition.

(2) An agency decision denying a petition is a final agency action.

67-5231. INVALIDITY OF RULES NOT ADOPTED IN COMPLIANCE WITH THIS CHAPTER -- TIME LIMITATION.

(1) Rules may be promulgated by an agency only when specifically authorized by statute. A temporary or final rule adopted and becoming effective after July 1, 1993, is voidable unless adopted in substantial compliance with the requirements of this chapter.

(2) A proceeding, either administrative or judicial, to contest any rule on the ground of noncompliance with the procedural requirements of this chapter must be commenced within two (2) years from the effective date of the rule.

67-5232. DECLARATORY RULINGS BY AGENCIES.

(1) Any person may petition an agency for a declaratory ruling as to the applicability of any statutory provision or of any rule administered by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action.

67-5240. CONTESTED CASES.

A proceeding by an agency, other than the public utilities commission or the industrial commission, that may result in the issuance of an order is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law.

Sections 67-5241 through 67-5279 are not printed here. These sections deal with contested case proceedings, declaratory rulings, judicial review, etc., and, as such, do not apply to the rulemaking process directly, but rather, to rules already promulgated and in effect.

67-5291. LEGISLATIVE REVIEW OF RULES.

The standing committees of the legislature may review temporary, pending and final rules which have been published in the bulletin or in the administrative code. If reviewed, the standing committee which reviewed the rules shall report to the membership of the body its findings and recommendations concerning its review of the rules. If ordered by the presiding officer, the report of the committee shall be printed in the journal. A concurrent resolution may be adopted approving the rule, or rejecting, amending or modifying the rule where it is determined that the rule violates the legislative intent of the statute under which the rule was made, or where it is determined that any rule previously promulgated and reviewed by the legislature shall be deemed to violate the legislative intent of the statute under which the rule was made. The rejection, amendment or modification of a rule by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsibility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve, amend, modify, or reject an agency rule and to transmit a copy of the concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of a new rule, or the incorporation of any legislative amendments to a new rule. If a rule has been amended or modified by the legislature, the agency shall republish the rule in accordance with the provisions of chapter 52, title 67, Idaho Code, reflecting the action taken by the legislature and the effective date thereof. If a rule has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated

within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and effect until the same is rejected, amended or modified by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms.

67-5292. EXPIRATION OF ADMINISTRATIVE RULES.

(1) Notwithstanding any other provision of this chapter to the contrary, every rule adopted and becoming effective after June 30, 1990, shall automatically expire on July 1 of the following year unless the rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

(2) All rules adopted prior to June 30, 1990, shall expire on July 1, 1991, unless extended by statute. Thereafter, any rules which are extended shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each succeeding year.

(3) Rules adopted and becoming effective pursuant to this chapter may be extended in whole or in part. When any part of an existing rule is amended, then that entire rule shall be subject to the provisions of this section.

(4) This section is a critical and integral part of this chapter. If any portion of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall be deemed to affect all rules adopted subsequent to the effective date of this act and such rules shall be deemed null, void and of no further force and effect.

IDAPA 44 - OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR

44.01.01 - RULES OF THE ADMINISTRATIVE RULES COORDINATOR

000. LEGAL AUTHORITY.

In accordance with Section 67-5206(1), Idaho Code, the Administrative Rules Coordinator shall promulgate rules implementing the provisions of Sections 67-5203, 67-5204, and 67-5205, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," IDAPA 44, Title 01, Chapter 01. These rules constitute the minimum style, format and numbering requirements for administrative rules in Idaho. (7-1-97)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Office of the Administrative Rules Coordinator, 650 West State Street -- Room 100, P.O. Box 83720, Boise, Idaho, 83720-0306. (3-30-01)

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. (7-1-93)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (3-30-01)

005. INCLUSIVE GENDER.

For all sections and subsections of all administrative rules in Idaho, the terms and references used in the masculine include the feminine and vice versa, as appropriate. (7-1-93)

006. SEVERABILITY.

The sections and subsections of all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (7-1-93)

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Office of Administrative Rules is in Boise, Idaho. The office is located at 650 W. State Street, Room 100, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Office of Administrative Rules, P.O. Box 83720, Boise, Idaho 83720-0306. The telephone of the office is (208) 332-1820. The facsimile number of the office is (208) 334-2395. (3-30-01)

008. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (3-30-01)

009. (RESERVED).

010. DEFINITIONS.

01. APA. The Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-93)

02. Agency. Each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction. (7-1-93)

03. Agency Action. In these rules means the whole or part of a rule, or the failure to issue a rule. (7-1-93)

- 04. Agency Head.** An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. (7-1-93)
- 05. Bulletin.** The Idaho administrative bulletin established in Section 67-5203, Idaho Code. (7-1-93)
- 06. Catchline.** A short description of the section or subsection used to introduce a block of text at the major section level and first sublevel. (7-1-93)
- 07. Certified Rules.** Rules certified in effect during a specified period in time after July 1, 1993. Only the coordinator shall certify rules as the officially promulgated rules of Idaho. (7-1-93)
- 08. Code.** The Idaho administrative code established in Title 67, Chapter 52, Idaho Code. (7-1-93)
- 09. Coordinator.** The office of the Administrative Rules Coordinator, as created in Section 67-5202, Idaho Code. (7-1-97)
- 10. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
- 11. Form or Format.** The internal organization, structure and presentation of the rules in Idaho as set forth in this chapter. (7-1-93)
- 12. IDAPA.** A numbering designation for all administrative rules in Idaho which denotes rules promulgated in accordance with the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. The numbering scheme denotes a distinct agency code, a title code, a chapter code, and section, subsection, paragraph, and subparagraph numbering as appropriate. (3-30-01)
- 13. Legal Citation.** The specific reference to a document or passage of a document using the generally accepted method of notation. For all rules, the designation incorporates a form of the IDAPA numbering scheme. (7-1-93)
- 14. Legislative Format.** A form of displaying modifications to text by underscoring new text and overstriking deleted text. (7-1-97)
- 15. Numbering.** The alpha-numeric display schematic for the rules in Idaho, also known as the IDAPA system, as set forth in this chapter. (7-1-93)
- 16. Official Text.** Text of a document promulgated by an agency in accordance with Title 67, Chapter 52, Idaho Code, and is the only legally enforceable text of such document. (7-1-93)
- 17. Page.** One (1) page is one (1) impression side of the official text published in the Code or Bulletin. (7-1-97)
- 18. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (7-1-93)
- 19. Regulation.** A federal rule promulgated in accordance with the federal Administrative Procedures Act, Public Law 404, 60 Stat. 237 (1946), as amended. (7-1-93)
- 20. Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)
- 21. Rule Drafter.** A person who creates, modifies, or proposes change to the administrative rules of the state of Idaho. (7-1-93)
- 22. Rulemaking.** The process for formulation and promulgation, in order to adopt, amend, or repeal a

rule. (7-1-93)

23. Section, Subsection, Paragraph, and Subparagraph. Section, subsection, paragraph, and subparagraph are divisions that breakdown the text of a rule into separate blocks of text that are numbered using the numbering schematic set forth in this rule. If further breakdown of the rule beyond the subparagraph level is required, approval must be granted by the Office of Administrative Rules. The text of a rule is subdivided in the following format: (3-30-01)

a. Section. This will include all text that appears at the main three (3) digit level. As an example, this text is part of the larger main Section "010". The entire section is cited as Section 010. (3-30-01)

b. Subsection. This is the further breakdown of a main section and will use a numeric code. As an example, this subsection is ".23" and is cited as Subsection 010.23. (3-30-01)

c. Paragraph. This is the further breakdown of a subsection and will use a lower case alphabetic code. As an example, this paragraph is "c." and is cited as Paragraph 010.23.c. (3-30-01)

d. Subparagraph. This is a further breakdown of a paragraph and will use a lower case roman numeral code. As an example, a further breakdown of this paragraph would be cited as Subparagraph 010.23.d.i. (3-30-01)

24. Style. A method of writing rules denoting standard elements of consistency, simplicity, and clarity as set forth in this chapter. (7-1-93)

011. -- 049. (RESERVED).

050. ADMINISTRATIVE CODE ACCOUNT.

All moneys received by the coordinator from APA-related products or services shall be deposited in the administrative code account as provided in Section 67-5205(4), Idaho Code. (7-1-97)

051. AGENCY PAYMENT FOR RULEMAKING.

The coordinator is authorized to allocate costs of publication and distribution to each participating agency on a per page basis. (7-1-93)

01. Less Than a Full Page. The cost per page may be imposed even though less than a full page of publication is required. (7-1-97)

02. Cost to Agencies for Code Publication. Pursuant to Section 67-5205(4), Idaho Code, the fee for rules of each agency contained in the Code billed to the respective agency shall not exceed fifty-six dollars (\$56) for each page of the Code. The fee shall be calculated based on actual pages published by the coordinator for each agency within the official copy of the Code. The cost allocations to each participating agency shall coincide with the annual publication of the Code and each agency shall promptly pay into the Administrative Code account such costs. (3-20-04)

03. Cost to Agencies for Bulletin Publication. Pursuant to Section 67-5205(4), Idaho Code, the fee for rules of each agency contained in the Bulletin billed to the respective agency shall not exceed sixty-one dollars (\$61) for each page per publication event. This fee shall be calculated based on actual pages published by the coordinator for each agency within the official copy of the Bulletin. The cost allocations to each participating agency shall be made monthly by the coordinator, and each participating agency shall promptly pay into the administrative code account such costs. (3-20-04)

052. COSTS OF PUBLICATIONS.

The coordinator is authorized to charge for copies of all APA-related publications. (3-20-04)

01. Cost of Individual Rule Chapters. The prices to be charged for chapters of rules or portions thereof shall not exceed the larger of five dollars (\$5), or ten cents (\$.10) per page. (7-1-97)

02. Cost of Certified Rules. Certified rules shall be provided without charge and shall include an

affidavit of certification, notarized by the coordinator, and a copy of specific rules in effect on a specific date after July 1, 1993. (7-1-97)

03. Cost of The Administrative Bulletin. The prices to be charged for the Bulletin in the form of an annual subscription shall not exceed four hundred dollars (\$400) per year. The price for individual, monthly issues, which are subject to availability, shall not exceed the larger of forty dollars (\$40) per volume or twenty cents (\$.20) per page, plus sales tax, if applicable. (3-16-04)

04. Cost of the Administrative Code. The prices to be charged for the Administrative Code in the form of an annual subscription shall not exceed four hundred and fifty dollars (\$450) plus sales tax, if applicable, per year. Individual copies of the Administrative Code may be purchased but are subject to availability. The cost per volume shall not exceed seventy-five dollars (\$75). (3-16-04)

05. Free Distribution of Publications. In accordance with Section 67-5205(2), Idaho Code, the coordinator shall distribute copies free of charge as follows: (3-20-04)

- a.** One (1) to each county clerk for the use of the county law library. (7-1-93)
- b.** One (1) each to the senate and the house of representatives. (7-1-93)
- c.** One (1) to the attorney general. (7-1-93)
- d.** One (1) to the legislative council. (7-1-93)
- e.** One (1) each to the state universities and colleges, and one (1) to each community college. (7-1-93)
- f.** One (1) to the state law library. (7-1-93)
- g.** One (1) to the state library. (7-1-93)
- h.** One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, Albertson College Library, Ricks College Library, Northwest Nazarene College Library and Twin Falls Public Library. (9-7-94)

06. Other Free Publications. The coordinator may distribute free copies for official use and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. (3-20-04)

053. -- 099. (RESERVED).

100. REVIEW AND SUBMISSION OF AGENCY RULES.

The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all Idaho agencies. The coordinator shall review all submitted rules for style, format, and numbering, and may return a rule that is not in the proper style, form, or number. (7-1-93)

01. Submission of Rules. All agencies shall submit a copy of their respective rules for publication in the Bulletin, certified by the agency director or designee, in the following formats: (6-7-94)

- a.** All submitted rules shall be printed, one-sided only, on eight and one-half (8 1/2) inch wide by eleven (11) inch long paper denoting all changes in legislative format; and (7-1-97)
- b.** All submitted rules shall be provided electronically denoting legislative format. Electronic filing may include, but is not limited to, electronic mail, FTP, diskette, or other electronic transfer methodology. (7-1-97)
- c.** All rules submitted to the coordinator shall be obtained from the most current document available from the coordinator. (7-1-97)

02. Submitted Rules. All submitted rules shall be numbered, styled and formatted in accordance with these rules. (7-1-97)

101. UNIFORM STYLE AND FORMAT OF RULES.

In accordance with Section 67-5206(1)(b), Idaho Code, The coordinator shall establish a uniform style and format applicable to rules adopted by all agencies. (7-1-93)

01. Standard Requirements of Style. Text used within a rule shall include three (3) distinct elements: (7-1-97)

a. Consistency denotes standardized arrangement of specific organizational division of text as well as language structures. Rule text shall appear with consistent application of terms, sentences, structures, formats, numbering, and other structures to avoid confusion to the reader. (7-1-93)

b. Simplicity denotes presentation of complex ideas into easily understood concepts within the text of the rule. (7-1-93)

c. Clarity in rule drafting avoids unclear, ambiguous and obscure terms. Rules shall be simple, concrete combinations of text that conveys the meaning while avoiding vagueness and the need for varying interpretations. (7-1-93)

02. Uniform Format Requirements. Uniform format shall be required for all rules adopted in accordance with the APA. All rules shall incorporate consistent organizational structure and content which will allow the coordinator to consistently index and reference all rules. Rules not formatted as described in this chapter shall not be inserted in the administrative code and shall not be considered valid for the purposes of Section 67-5231(1), Idaho Code. Specific requirements are as follows: (7-1-97)

a. All major sections shall include the numbering scheme provided in this chapter followed by the catchline capitalized. (7-1-97)

b. The first required section of each rule chapter, the "000" section, shall be entitled "LEGAL AUTHORITY". This section shall include all statutory authorities granted or implied which allow rulemaking authority to the agency as set forth Section 67-5231(1), Idaho Code. (7-1-93)

c. The second required section of each rule chapter, the "001" section, shall be entitled "TITLE AND SCOPE". This section shall include a precise description of the legal citation of the chapter. Also, this section shall include a brief descriptive summary of the scope of the rule. (7-1-93)

d. The third required section of each rule chapter, the "002" section, shall be entitled "WRITTEN INTERPRETATIONS". This section shall indicate if the agency has or relies on any written interpretive statements of the rule chapter in accordance with Section 67-5201(19)(b)(iv), Idaho Code. (3-30-01)

e. The fourth required section of each rule chapter, the "003" section, shall be entitled "ADMINISTRATIVE APPEALS". This section is used to describe any appeal or hearing rights for affected individuals relating to the programs or services described in the rule chapter. (7-1-93)

f. The fifth required section of each rule chapter, the "004" section, shall be entitled "INCORPORATION BY REFERENCE". This section is used to describe and list all documents being incorporated by reference into the rule pursuant to, and in accordance with, Section 67-5229, Idaho Code. (3-30-01)

g. The sixth required section of each rule chapter, the "005" section, shall be entitled "OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS". This section includes the principal location of the main office, the hours the office is open to the public, the mailing address where documents may be filed or obtained, and the physical address of the main office of the agency. (3-30-01)

h. The seventh required section of each rule chapter, the "006" section, shall be entitled "PUBLIC RECORDS ACT COMPLIANCE" and shall state that the rule has been promulgated in accordance with the

Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. (3-30-01)

i. The eighth required section of each rule chapter, one (1) of “007” through “010” sections, shall be entitled “DEFINITIONS”. This section lists alphabetically all terms distinct to the rule chapter. Definitions are used to describe specific terms of art and other words or phrases to aid the user in describing the intent of the rule. (3-30-01)

j. Reserved major sections may be used as appropriate to allow for expansion, segregation, and flexibility within the chapter. Subsections, paragraphs, and subparagraphs shall not be designated as reserved. (3-30-01)

k. The remaining sections within the body of the rule chapter, the “011” through “999” sections, may be used as the agency deems necessary for describing the programs, services, requirements, focus and intent of the rule. (7-1-93)

l. A paragraph of descriptive references may be used at the end of the major section after all sublevel sections. This descriptive paragraph may include: effective dates set by the legislature, cross-references, compiler’s notes, references or extractions of written interpretations, or other reference tools approved by the coordinator. The descriptive paragraph shall include a format and style distinct from the text of the rules as approved by the coordinator. (7-1-97)

03. Maps, Charts, Graphs, Diagrams, and Other Visual Aids. Rules may contain maps, charts, graphs, diagrams, illustrations, forms, or similar descriptive text within the body of the rule. (7-1-97)

a. Agencies are encouraged to include written interpretations of the rule where the requirement to list the material in the rule is in question. (7-1-97)

b. Agencies are encouraged to include written interpretations by incorporating such documents by reference, in accordance with Section 67-5229, Idaho Code. (7-1-97)

04. Legislative Format. All modified rule text shall underscore text to be added and overstrike text to be deleted. (7-1-97)

a. In the case of amendment to a current rule, the desired amendments to text are made using legislative format. The effective date shall be overstruck followed by parentheses surrounding eight (8) underscored spaces, flushed right. (7-1-93)

b. When an agency proposes to enact a new section within an existing rule, the entire proposed text shall be underscored. All effective dates are noted as parentheses surrounding eight (8) underscored spaces, flushed right. (7-1-93)

c. When an agency proposes to repeal a complete chapter, overstriking is not required. The bulletin will note that the chapter has been “REPEALED IN ITS ENTIRETY”. (7-1-93)

d. When an agency proposes to adopt a complete chapter of rules, underscoring is not required. The effective date shall be noted as parentheses surrounding eight (8) spaces, flushed right after each block of text. (3-30-01)

e. Modifications to text appearing in the paragraph of descriptive references shall not appear in legislative format. (7-1-97)

102. UNIFORM NUMBERING OF RULES.

In accordance with Section 67-5206(1)(a), Idaho Code, the coordinator shall establish a uniform numbering system applicable to rules adopted by all agencies. (7-1-93)

01. IDAPA Numbering. The uniform numbering system is known as the “IDAPA” system. For complete citation, rule numbering is preceded with the term “IDAPA”, followed by a two (2) numerical digit agency

code followed by a period, a two (2) numerical digit division or title code followed by a period, and a two (2) numerical digit program or chapter code. For example, this chapter is numbered as follows: IDAPA 44.01.01. (3-30-01)

02. Internal Numbering. All chapters of agency rules consist of major sections identified by three (3) numerical digits beginning with "000" and ending with "999". (7-1-93)

03. Sublevels. Three (3) sublevels shall be allowed following the major section code. (3-30-01)

a. The first sublevel, called a Subsection, shall be a two (2) digit numeric code, beginning with "01." (3-30-01)

b. The second sublevel, called a Paragraph, shall be a single digit alphabetic code beginning with "a." and ending with "z." On a case-by-case basis, the coordinator may allow additional characters for expansion of this sublevel, using a double digit alphabetic code beginning with "aa." and ending with "zz." (3-30-01)

c. The third sublevel, called a Subparagraph, shall be a lower case roman numeral code, beginning with "i." (3-30-01)

d. On a case-by-case basis, the coordinator may allow additional sublevels consisting of an alternating code of numbers and letters enclosed in parentheses. (3-30-01)

04. Cross-Referencing. In order to clarify intent or avoid repetition, references to other rules are allowed. Such references are divided as follows: (7-1-93)

a. Internal Reference/Citation. References to a section or sections within a chapter shall provide a thorough notation of the identity of the text referenced. A citation to this section is "Paragraph 102.04.a." Internal references may also utilize the complete legal citation using the complete IDAPA numbering system. A citation to this section is "IDAPA 44.01.01.102.04.a." (3-30-01)

b. External Reference/Citation. References outside the chapter shall identify the complete legal citation using the IDAPA numbering system and shall include the name of the agency, the name of the chapter being referenced and the complete legal citation of the chapter being referenced. (3-30-01)

c. External referencing of documents other than Idaho administrative rules shall follow the provisions of Section 67-5229, Idaho Code, regarding incorporation by reference. (7-1-93)

103. -- 599. (RESERVED).

600. IDAHO ADMINISTRATIVE BULLETIN.

The coordinator shall receive all documents required in the APA to be published in the bulletin. (7-1-93)

01. Information. The bulletin shall contain specific information concerning the use of the bulletin, the rulemaking process in general, specific information concerning the documents being promulgated, and other information deemed necessary by the coordinator to describe the documents being published. (7-1-93)

02. Table of Contents. Each issue of the bulletin shall contain a table of contents. (7-1-93)

03. Cumulative Index. A cumulative index shall be published at least every three (3) months. (7-1-93)

04. Documents to Be Published. Such documents are identified in Section 67-5203(4), Idaho Code. (7-1-93)

05. Other Documents. Each issue of the Bulletin may include other reference-related documents as determined by the coordinator. (7-1-97)

601. IDAHO ADMINISTRATIVE BULLETIN PUBLICATION SCHEDULE.

Agencies shall file documents designated for publication in the bulletin with the Office of Administrative Rules. Documents must be submitted no later than 5:00 p.m. on the filing date which is published in the "Bulletin Publication Schedule" in the preface of the Idaho Administrative Bulletin. A copy of the "Bulletin Publication Schedule" may be obtained by contacting the Office of Administrative Rules. (7-1-99)

01. Time. The documents must be submitted no later than 5:00 p.m. on the filing date as published in the "Bulletin Publication Schedule" in the preface of the Idaho Administrative Bulletin. (7-1-99)

02. Date of Submission. Documents shall be submitted by the closing date for agency filing as published in the "Bulletin Publication Schedule" in the preface of the Idaho Administrative Bulletin. All documents filed after the closing date shall be published at the discretion of the Office of Administrative Rules with the permission of the Administrative Rules Coordinator. (7-1-99)

602. -- 699. (RESERVED).

700. IDAHO ADMINISTRATIVE CODE.

The coordinator shall publish a compilation of all final agency rules in the code. No negotiated, proposed, or pending rules shall be included in the code. Temporary rules, that meet the requirements of Section 67-5226, Idaho Code, and that are in effect at the time of publication, shall be included in the Administrative Code. (7-1-99)

701. IDAHO ADMINISTRATIVE CODE PUBLICATION SCHEDULE.

All documents filed in accordance with Section 67-5224(5), 67-5224(6), and 67-5224(7), Idaho Code, and IDAPA 44.01.01, shall be published in the administrative code. Other documents required for publication in the administrative code shall be received by the coordinator or the Office of Administrative Rules no later than June 1 of each year. (7-1-99)

702. -- 799. (RESERVED).

800. UNIFORM INDEXING SYSTEM FOR AGENCY ORDERS.

The coordinator shall establish a uniform indexing system for agency orders. All agencies shall code each order using the following: (7-1-93)

01. Numbering. A two (2) digit numeric code representing the agency followed by a sequential number assigned by the agency shall be placed on the agency order. (7-1-93)

02. Filing. Each such order shall be filed with the main and regional offices of the agency including an index. (7-1-93)

03. Index. Each agency shall maintain a complete index of their orders in column format, which includes: (7-1-93)

a. The agency name, address, phone number, and contact person as a heading to the document; (7-1-93)

b. The date of the order; (7-1-93)

c. The order number as set forth in Section 800.01; and (7-1-93)

d. A short description of the order. (7-1-93)

04. Updating The Index. The listing shall be updated by the agency no later than January 1 of each year. (7-1-93)

801. -- 999. (RESERVED).

EDITORS' NOTE

The following are excerpts from this chapter and do not represent the complete chapter. Please consult the Idaho Administrative Code for the complete text. These rules are current as of this publication but are subject to change and may become subsequently outdated. Please refer to the Cumulative Index of Rulemaking when referencing these rules for any changes that may have been made.

IDAPA 04 TITLE 11 Chapter 01

04.11.01 - IDAHO RULES OF ADMINISTRATIVE PROCEDURE OF THE ATTORNEY GENERAL

Subchapter A--General Provisions (Rules 0 through 99--General Provisions)

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Sections 67-5206(2), 67-5206(3) and 67-5206(4), Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is Idaho Rules of Administrative Procedure of the Attorney General. This chapter has the following scope: Every state agency that conducts rulemaking or hears contested cases must adopt individual rules of procedure as required by this chapter. Further every state agency will be considered to have adopted the procedural rules of this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (7-1-93)

002. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are available from the Office of the Attorney General, Statehouse, Boise, Idaho 83720. (7-1-93)

003. ADMINISTRATIVE APPEAL (RULE 3).

There is no provision for administrative appeals before the Attorney General under this chapter. This chapter governs administrative appeals before and within agencies that do not by rule opt out of some or all of this chapter. (7-1-93)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules required to be adopted by this chapter are public records. (7-1-93)

005. DEFINITIONS (RULE 5).

As used in this chapter: (7-1-93)

01. Administrative Code. The Idaho Administrative Code established in Chapter 52, Title 67, Idaho Code. (7-1-93)

02. Agency. Each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in Section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction. (7-1-93)

03. Agency Action. Agency action means: (7-1-93)

- a. The whole or part of a rule or order; (7-1-93)
- b. The failure to issue a rule or order; or (7-1-93)
- c. An agency's performance of, or failure to perform, any duty placed on it by law. (7-1-93)
- 04. Agency Head.** An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. (7-1-93)
- 05. Bulletin.** The Idaho Administrative Bulletin established in Chapter 52, Title 67, Idaho Code. (7-1-93)
- 06. Contested Case.** A proceeding which results in the issuance of an order. (7-1-93)
- 07. Coordinator.** The administrative rules coordinator prescribed in Section 67-5202, Idaho Code. (7-1-93)
- 08. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
- 09. Final Rule.** A rule that has been adopted by an agency under the regular rulemaking process and that is in effect. (7-1-97)
- 10. License.** The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. (7-1-93)
- 11. Official Text.** The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. (7-1-93)
- 12. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)
- 13. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (7-1-93)
- 14. Pending Rule.** A rule that has been adopted by an agency under the regular rulemaking process (i.e., proposal of rule in Bulletin, opportunity for written comment or oral presentation, and adoption of rule in Bulletin) and remains subject to legislative review. (7-1-97)
- 15. Person.** Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (7-1-93)
- 16. Provision of Law.** The whole or a part of the state or federal constitution, or of any state or federal:
 - a. Statute; or (7-1-93)
 - b. Rule or decision of the court. (7-1-93)
- 17. Proposed Rule.** A rule published in the bulletin as provided in Section 67-5221, Idaho Code. (7-1-97)
- 18. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (7-1-93)

19. Rule. The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of chapter 52, title 67, Idaho Code, and that implements, interprets, or prescribes: (7-1-93)

a. Law or policy, or (7-1-93)

b. The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (7-1-93)

i. Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)

ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (7-1-93)

iii. Intra-agency memoranda; or (7-1-93)

iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)

20. Rulemaking. The process for formulation, adoption, amendment or repeal of a rule. (7-1-93)

21. Submitted for Review. A rule that has been provided to the legislature for review at a regular or special legislative session as provided in Section 67-5291, Idaho Code. (7-1-97)

22. Temporary Rule. A rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in Section 67-5226, Idaho Code. (7-1-97)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 04.11.01.000 et seq. For example, this section's citation is IDAPA 04.11.01.006. In documents submitted to an agency or issued by an agency, these rules may be cited as IRAP (Idaho Rules of Administrative Procedure) and action number less leading zeroes. For example, this rule may be cited as IRAP 6. (7-1-93)

007. OFFICE--OFFICE HOURS--MAILING ADDRESS AND STREET ADDRESS (RULE 7).

Each agency must individually adopt a rule of procedure giving the agency's mailing and street addresses, telephone number, text telephone number (if the agency has a text telephone), FAX number (if the agency has a FAX), and office hours for accepting filing of documents. In addition, if the agency has offices at more than one location in the State at which documents may be filed in rulemakings or contested cases, the agency must also list the mailing and street addresses, telephone numbers and FAX numbers (if there are FAX numbers) of each of those offices. (7-1-94)

008. FILING OF DOCUMENTS--NUMBER OF COPIES (RULE 8).

Each agency must individually adopt a rule of procedure that lists the officer or officers with whom all documents in rulemakings or contested cases must be filed. This rule may require all filings to be made with one officer, for example the agency director or the agency secretary, or may generally provide that all documents in a given rulemaking or contested case will be filed with an officer designated for the specific rulemaking or contested case. The rule must state whether copies in addition to the original must be filed with the agency. (7-1-93)

009. -- 049. (RESERVED).

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure before agencies in contested cases, unless otherwise provided by rule, notice or order of the agency. Rules 800 through 860 govern procedure before agencies in rulemaking, unless otherwise provided by rule or notice of the agency. Every state agency that hears contested cases (except the Industrial Commission and the Public Utilities Commission) must use the procedures for contested cases adopted in these rules unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. Every state

agency that conducts rulemaking must use the procedures for rulemaking adopted in this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (7-1-93)

051. REFERENCE TO AGENCY (RULE 51).

Reference to the agency in these rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, or presiding officer, as context requires. Reference to the agency head means to the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. (7-1-93)

052. LIBERAL CONSTRUCTION (RULE 52).

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (7-1-93)

053. COMMUNICATIONS WITH AGENCY (RULE 53).

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed or otherwise transmitted. (7-1-93)

054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).

Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (7-1-93)

055. SERVICE BY AGENCY (RULE 55).

Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, summonses, complaints, or orders issued by the agency may serve these documents by regular mail, or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a State employee or State agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (7-1-93)

056. COMPUTATION OF TIME (RULE 56).

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not a Saturday, Sunday or a legal holiday. (7-1-93)

057. FEES AND REMITTANCES (RULE 57).

Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. (7-1-93)

058. -- 099. (RESERVED).

(Please refer to the Idaho Administrative Code to view Sections 100 through 799)

(BREAK IN SECTIONS - SECTION 100 THROUGH 799 ARE NOT SHOWN HERE.)

Subchapter C--Rulemaking
Rules 800 through 860--Rulemaking
Rules 800 through 809--Introduction

(BREAK IN SECTIONS - SECTION 100 THROUGH 799 ARE NOT SHOWN HERE.)

800. FORMAL AND INFORMAL RULEMAKING (RULE 800).

Formal rulemaking refers only to rulemaking procedures associated with formal notice of proposed rulemaking, receipt of and consideration of written or oral comment on the record in response to notice of proposed rulemaking, and adoption of rules. Informal rulemaking refers to informal procedures for development of, comment upon, or review of rules for later formal consideration. No rule may come into effect solely as a result of informal rulemaking. Agreements coming from informal rulemaking must be finalized by formal rulemaking. (7-1-93)

801. -- 809. (RESERVED).

Rules 810 through 819--
Informal, Negotiated Rulemaking

810. LEGISLATIVE PREFERENCE FOR NEGOTIATED RULEMAKING PROCEDURES (RULE 810).

This rule addresses informal, negotiated rulemaking as described by Section 67-5220, Idaho Code. The agency, when feasible, shall proceed by informal, negotiated rulemaking in order to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rulemaking; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. (7-1-93)

811. PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN (RULE 811).

If the agency determines that informal, negotiated rulemaking is feasible, it shall publish in the Idaho Administrative Bulletin a notice of intent to promulgate a rule. If the agency determines that informal, negotiated rulemaking is not feasible, it shall explain in its notice of intent to promulgate rules why informal rulemaking is not feasible and shall proceed to formal rulemaking as provided in this chapter. Reasons why the agency may find that informal, negotiated rulemaking is not feasible include, but are not limited to, the need for temporary rulemaking, the simple nature of the proposed rule change, the lack of identifiable representatives of affected interests, or determination that affected interests are not likely to reach a consensus on a proposed rule. The determination of the agency whether to use informal, negotiated rulemaking is not reviewable. (7-1-93)

812. CONTENTS OF NOTICE OF INTENT TO PROMULGATE RULES (RULE 812).

The notice of intent to promulgate rules shall announce that the agency intends to proceed by way of informal, negotiated rulemaking to develop a proposed rule and shall include: (7-1-93)

01. Subject Matter. A brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking. (7-1-93)

02. Authority. The statutory authority for the rulemaking. (7-1-93)

03. Obtain Copy. An explanation how to obtain a preliminary draft of the proposed rules, if one is available. (7-1-93)

04. Issues. The principal issues involved and the interests which are likely to be significantly affected by the rule. (7-1-93)

05. Agency Contacts. The person(s) designated to represent the agency. (7-1-93)

06. Method of Participation. An explanation how a person may participate in the informal, negotiated rulemaking. (7-1-93)

07. Schedule. A proposed schedule for written comments or for a public meeting of interested persons, and a target date, if one exists, to complete negotiation and to publish a proposed rule for notice and comment.

(7-1-93)

813. PUBLIC MEETINGS (RULE 813).

The agency may convene public meetings of interested persons to consider the matter proposed by the agency and to attempt to reach a consensus concerning a proposed rule with respect to the matter and any other matter the parties determine is relevant to the proposed rule. Person(s) representing the agency may participate in the deliberations.

(7-1-93)

814. REPORTS TO THE AGENCY (RULE 814).

If the parties reach a consensus on a proposed rule, they shall transmit to the agency a report stating their consensus and, if appropriate, a draft of a proposed rule incorporating that consensus. If the parties are unable to reach a consensus on particular issues, they may transmit to the agency a report specifying those areas on which they reached consensus and those on which they did not, together with arguments for and against positions advocated by various participants. The participants or any individual participant may also include in a report any information, recommendations, or materials considered appropriate.

(7-1-93)

815. AGENCY CONSIDERATION OF REPORT (RULE 815).

The agency may accept in whole or in part or reject the consensus reached by the parties in publishing a proposed rule for notice and comment.

(7-1-93)

816. -- 819. (RESERVED).

Rules 820 through 829--
Petitions to Initiate Rulemaking

820. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING (RULE 820).

This rule addresses petitions to initiate rulemaking as described by Section 67-5230, Idaho Code. (7-1-93)

01. Requirement. Any person petitioning for initiation of rulemaking must substantially comply with this rule. (7-1-93)

02. Form and Contents. The petition must be filed with the agency and shall: (7-1-93)

a. Identify the petitioner and state the petitioner's interest(s) in the matter; (7-1-93)

b. Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and (7-1-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

821. AGENCY RESPONSE TO PETITION (RULE 821).

01. Action of Agency. Within twenty-eight (28) days after the agency has received a petition to initiate rulemaking, the agency shall initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial, unless the rulemaking authority is in a multi-member agency board or commission whose members are not full-time officers or employees of the state, in which case the multi-member board or commission shall have until the first regularly scheduled meeting of the multi-member board or commission that takes place seven (7) or more days after submission of the petition to initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial. (7-1-97)

02. Denial. If the petition is denied, the written denial shall state: (7-1-93)

a. The agency has denied your petition to initiate rulemaking. This denial is a final agency action within the meaning of Section 67-5230, Idaho Code. (7-1-93)

b. Pursuant to Section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rulemaking by filing a petition in the District Court of the county in which: (7-1-93)

- i.** The hearing was held, (7-1-93)
- ii.** This final agency action was taken, (7-1-93)
- iii.** The party seeking review resides, or operates its principal place of business in Idaho, or (7-1-97)
- iv.** The real property or personal property that was the subject of the denial of the petition for rulemaking is located. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rulemaking. See Section 67-5273, Idaho Code. (7-1-93)

822. NOTICE OF INTENT TO INITIATE RULEMAKING CONSTITUTES ACTION ON PETITION (RULE 822).

The agency may initiate rulemaking proceedings in response to a petition to initiate rulemaking by issuing a notice of intent to promulgate rules in the Idaho Administrative Bulletin on the subject matter of the petition if it wishes to obtain further comment whether a rule should be proposed or what rule should be proposed. Issuance of a notice of intent to promulgate rules satisfies an agency's obligations to take action on the petition and is not a denial of a petition to initiate rulemaking. (7-1-93)

823. -- 829. (RESERVED).

**Rules 830 through 839--
Procedure on Rulemaking for Pending Rules**

830. REQUIREMENTS FOR NOTICE OF PROPOSED RULEMAKING (RULE 830).

- 01. Content.** Every notice of proposed rulemaking shall include: (7-1-93)
 - a.** A statement of the subject matter of the proposed rules; (7-1-93)
 - b.** A statement of the specific statutory authority for the proposed rules, including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking; (7-1-97)
 - c.** A statement in nontechnical terms of the substance of the proposed rules, and, if the agency intends to take oral testimony on the proposed rule, the location, date and time of the oral presentations; (7-1-97)
 - d.** A statement whether the agency intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation; (7-1-93)
 - e.** The address to which written submissions concerning the proposed rules must be mailed, (7-1-93)
 - f.** The name and telephone number of an agency contact to whom questions about the proposed rules may be referred; (7-1-93)
 - g.** The deadline for written comment on the proposed rules and for asking for an opportunity for an oral presentation concerning the proposed rules; (7-1-97)
 - h.** A statement whether negotiated rulemaking has been conducted, and if not, why not; (7-1-97)
 - i.** A summary of the proposed rules; and (7-1-97)

- j. The name, mailing address and telephone number of an agency contact person for the rulemaking. (7-1-97)

831. INFORMAL PHASES OF FORMAL RULEMAKING (RULE 831).

In addition to the formal phases of rulemaking proceedings, the agency may schedule meetings after the formal proposal of rules to explain the operation of the rules proposed. (7-1-93)

832. COMMENTS ON PROPOSED RULES (RULE 832).

Deadlines for comment upon proposed rules or amendments to proposed rules will be set forth in the Idaho Administrative Bulletin. Comments should be made to the officers listed in the notices of proposed rulemaking published in the Idaho Administrative Bulletin. Further information concerning individual rulemaking should be directed to the contact person listed for that rulemaking in the Idaho Administrative Bulletin. (7-1-93)

833. PETITIONS FOR ORAL PRESENTATION (RULE 833).

01. Requirement. Any person petitioning for an opportunity for an oral presentation in a substantive rulemaking must substantially comply with this rule. (7-1-93)

02. Content. The petition shall: (7-1-93)

a. Identify the petitioner and state the petitioner's interests in the matter, (7-1-93)

b. Describe the nature of the opposition to or support of the rule or amendment to the rule proposed to be promulgated by the agency, and (7-1-93)

c. Indicate alternative proposals of the petitioner and any statute, order, rule or other controlling law or factual allegations upon which the petitioner relies to support the request for the opportunity to provide an oral presentation. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

03. Oral Presentation. Within fourteen (14) days after receiving a petition for an oral presentation, the agency shall schedule the oral presentation or deny it. The agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or another agency, but no oral presentation need be provided when the agency has no discretion as the substantive content of a proposed rule because the proposed rule is intended solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule. If oral presentation is granted, notice of the oral presentation shall be published in the Idaho Administrative Bulletin. If oral presentation is denied, the denial shall state the grounds for denial. (7-1-93)

834. THE RULEMAKING RECORD (RULE 834).

The agency shall maintain a record of each rulemaking proceeding. (7-1-93)

01. Contents. The record for a rulemaking proceeding shall include: (7-1-93)

a. Copies of all publications in the Idaho Administrative Bulletin relating to that rulemaking proceeding; (7-1-93)

b. All written petitions, submissions, and comments received by the agency, and the agency's responses to those petitions, submissions and comments; (7-1-93)

c. All written materials considered by the agency in connection with formulating the proposal or adoption of the rule; (7-1-93)

d. A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and (7-1-93)

e. Any other materials or documents prepared in conjunction with the rulemaking, including any

summaries prepared for the agency in considering the rulemaking. (7-1-93)

02. Recording or Reporting. All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at their own expense. (7-1-97)

835. ADOPTION AND PUBLICATION OF PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION (RULE 835).

01. Adoption. After the expiration of the written comment period for rulemaking and following any oral presentation on the rulemaking, but no sooner than seven (7) days after the expiration of the comment period, the agency shall consider fully all issues presented by the written and oral submissions respecting the proposed rule before adopting a pending rule. (7-1-97)

02. Publication. Upon the agency's adoption of a pending rule, the agency shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the agency need not publish the full text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the Vol. of the bulletin where the text is available and must note all changes that have been made. In addition, the agency must publish in the bulletin a concise explanatory statement containing: (7-1-97)

a. The reasons for adopting the pending rule; (7-1-97)

b. A statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes; (7-1-97)

c. The date on which the pending rule will become final and effective pursuant to Section 67-5224(5), Idaho Code; (7-1-97)

d. A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature; (7-1-97)

e. An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and (7-1-97)

f. A statement how to obtain a copy of the agency's written review of and written responses to the written and oral submissions respecting the proposed rule. (7-1-97)

03. Rule Imposing or Increasing Fees. When any pending rule imposes a new fee or charge or increases an existing fee or charge, the agency shall provide the coordinator with a description of that portion of the rule imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. (7-1-97)

836. FINAL RULES (RULE 836).

Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in Section 67-5224, Idaho Code. (7-1-97)

837. -- 839. (RESERVED).

840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES (RULE 840).

01. Gubernatorial Finding. The agency may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been

approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge. (7-1-97)

02. Effective Date. Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective. (7-1-97)

03. Expiration. In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule that has become effective pursuant to Section 67-5224(5), Idaho Code. (7-1-97)

04. Notice and Publication. Agencies shall give such notice as is practicable in connection with adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (7-1-97)

05. Associated Proposed Rule. Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, an agency must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final. (7-1-97)

841. -- 849. (RESERVED).

850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES (RULE 850).

The agency may amend pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will be incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. (7-1-97)

851. -- 859. (RESERVED).

860. PERSONS WHO MAY SEEK JUDICIAL REVIEW (RULE 860).

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an agency rule (either temporary or final) may seek judicial review in district court. (7-1-93)

01. Filing. The petition for judicial review must be filed with the agency and with the district court and served on all parties. Pursuant to Section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: (7-1-93)

- a.** The hearing was held; (7-1-93)
- b.** The final agency action was taken; (7-1-93)
- c.** The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (7-1-97)
- d.** The real property or personal property that was the subject of the agency is located. (7-1-93)

02. Time. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (7-1-93)

861. -- 999. (RESERVED).

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Idaho Department of Administration Office of the Administrative Rules Coordinator

April 2009

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