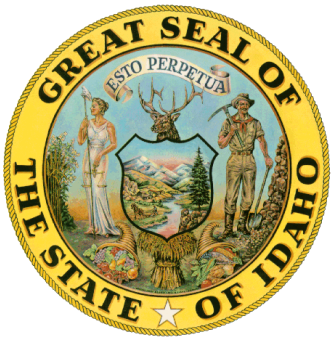
STATE OF IDAHO



OFFICE OF ADMINISTRATIVE RULES

The Rule Writer's Manual

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

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ADMINISTRATIVE RULES

Idaho Code defines rulemaking as the process for the formulation, adoption, amendment, or repeal of a rule. There are a number of different events that may trigger this process. The adoption of new regulations by the federal government or the passage of a statute by our state Legislature are two of the most common. Other events, such as changes to federal laws, the receipt of public comments or a petition to adopt a rule, modernizing or streamlining procedures, or a simple review of existing rules, can prompt the need for change and cause an agency to initiate a rulemaking and set the rule promulgation process in motion.

An agency affected by a regulation or statute, for instance, may find that new administrative rules, or revisions to existing rules, are necessary to carry out statutory provisions or federal mandates. Through rulemaking the agency, in effect, *legislates* an interpretation, clarification, standard, or procedure under authority established by the Legislature. In this sense, an administrative rule, then, is *law*, made under powers granted the agency by the Legislature or directly by the Constitution. All rules promulgated within the authority conferred by law, and in accordance with the Administrative Procedure Act (APA), have the *force and effect of law* and should 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. But, just as a law would be overturned in the courts, a rule incorrectly implemented or unauthorized by statute can be invalidated.

Rulemaking, then, is a serious undertaking and should be given the same respect as legislative statutes. It must be considered that rules often have a more direct influence on the welfare of the public than respective statutes. Former Speaker of the House and now U.S. Congressman Michael K. Simpson put it this way:

> "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."

A "Rule" has a slightly different meaning under the laws of the federal government and those of several 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 be put in rule and what cannot. The statutory definition is broad enough that making this determination can be a difficult undertaking. In order for a rule to meet and not exceed legislative intent, or to hold up under legislative scrunity or judicial review, the rule must fall within this definition. Differing intrepretations of statutes or the ambiguity of legislative intent language add to the difficulty of including language to a rule that will pass muster and survive the gauntlet from inception to enforcement.

There are five distinct rulemaking activities which make up the rule promulgation or rulemaking process in Idaho. A rulemaking does not always include of all five of these activities, however, the rule writer must be aware of each and the differences that exist between them.

NEGOTIATED RULEMAKING

What is Negotiated Rulemaking?

Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. 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 it is not feasible and the agency proceeds to formal rulemaking (i.e. proposed rulemaking), it shall explain in its notice of proposed rulemaking why negotiated rulemaking is not feasible. There are many reasons why it may not be feasible, such as the need for temporary rulemaking, simple nature of the changes being made, inability to reach a consensus with the affected parties, etc. If a rulemaking that is being done to comply with existing state or federal laws or regulations or a controlling judicial decision or court order, the agency is not required to enter into negotiated rulemaking. There is simply nothing that can be negotiated by the agency. The determination of the agency whether or not to use negotiated rulemaking is not reviewable.

IDAPA 04.11.01 also requires that specific information be included in the Notice of Intent to Promulgate a Rule (Negotiated Rulemaking). This information includes giving hearing dates, times, and locations, if available, how a person may participate in the rulemaking, where and if copies of the preliminary draft may be obtained, principal issues involved and the interests which are likely to be significantly affected by the rule.

For agencies that are not governed by the Attorney General's rules, the negotiated rulemaking process is generally much less structured. As explained below, the Administrative Procedure Act (Section 67-5220, IC) 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 be 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, invite written comments, etc. This process is generally **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. These meetings should result in the formulation of a proposed or temporary rule that is ready to be published in the Bulletin, however, in some cases the result may be that a formal rulemaking will not be pursued.

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.

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 they are included in the process in the beginning rather than at the end, or not at all.

* Negotiated rulemaking is an informal process. Regular rulemaking hearings are held only to receive testimony and comments. Negotiated rulemaking meetings allow for discussions and conversations on the subject matter.

PROPOSED RULE

What is a Proposed Rule?

A formal, written proposal by the agency to adopt a new rule, change or amend an existing rule, 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. Proposed rulemaking is a very structured process with strict requirements that must be followed in order for the rule to become legal and 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 publishes a notice of proposed rulemaking in the Administrative Bulletin.

Pursuant to Section 67-5221(1), Idaho Code:

The Notice of Proposed Rulemaking must contain the following information:

> *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 (from Idaho Code) for the rulemaking including a citation to a 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) the text of the proposed rule prepared in legislative format;*
>
> *(d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
>
> *(e) 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;*
>
> *(f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and*
>
> *(g) the deadline for public (written) comments on the proposed rule.*

Coinciding with the publication of the Bulletin, the OAR 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 notice also alerts the reader to any public hearings that may have been scheduled on any rulemakings, deadline extensions of written comment periods, where copies of the Bulletin are available and how they may be obtained. ***The newspaper notice identifies only proposed rulemakings*** and does not include information on negotiated, temporary, pending, or final rules that may also appear in the same Bulletin. The reader should always refer to the Bulletin and the Notice of Proposed Rulemaking to get the full text of the notice for more detailed information.

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

Because the rulemaking is proposed, it has no force and effect and, therefore, has no effective date. If the proposed rule is being published in conjunction with a temporary rulemaking, the agency will assign an effective date to the temporary rule only. A final effective date is added only after the rule has gone through the legislative review process and has been approved as final rule.

Rulemaking Moratorium

A moratorium on proposed rulemaking has been imposed by the legislature during the legislative session. This moratorium begins in late November and ends at the conclusion of the session. The various germane joint subcommittees that review individual agency's proposed rules do not meet during the legislative session. For this reason, the Legislative Services Office, which distributes the proposed rules to the subcommittees, will not accept an agency filing of proposed rules during the legislative session. Because of this, the Office of Administrative Rules cannot accept proposed rulemaking filings for publication in the Bulletin during this time.

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

TEMPORARY RULE

What is a Temporary Rule?

A temporary rule is one that is adopted by an agency that can be put into effect and enforced on the date specified by the agency prior to being reviewed and approved by the legislature. An agency may make a temporary rule immediately effective, however, it must meet certain criteria outlined in the APA and must be approved by the Governor. 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 the above three findings. The Governor makes this determination by the information supplied on the Temporary/ Proposed Administrative Rules Form (PARF). A copy of the text and notice of a temporary rule must be filed with the Legislative Services Office when filing with OAR for publication in the Bulletin. However, temporary rules are not subject to Section 67-5223, Idaho Code, that allows for public participation in the rulemaking. Unlike a proposed rule, the agency **does not** have to accept requests for public hearings, nor must they accept written comments regarding the temporary rule. The rule is not subject to legislative review prior to being adopted by the agency.

Temporary Rules that Impose a Fee or Charge

A temporary rule imposing 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 may result in the rule being rescinded and declared void.

Temporary and Proposed Rulemaking

In most cases, a temporary rulemaking can be done in conjunction with a proposed rulemaking. Because the APA requires that the text of both a temporary rule and a proposed rule be published in the Administrative Bulletin, doing a combined rulemaking will save money in publication costs since the text would be published only once. In any case, a temporary rule **MUST** be published in the first available issue of the Bulletin after its adoption by the agency.

How Long is a Temporary Rule Effective?

Temporary rules that are adopted and published in the Bulletin before the beginning of a legislative session must be submitted for review and extended by the legislature in order to remain in effect beyond the end of that upcoming 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 (Idaho Code, 67-5226(6)). All temporary rules must be submitted for legislative review and extended by concurrent resolution in order to remain in effect beyond the end of the legislative session. Failure to submit the temporary rule for review and extension, or rejection of the rule by the legislature, nullifies the rule and it is voided.

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.*

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 if the rule is being replaced by a new temporary rule, has been published concurrently with a proposed rulemaking that is being vacated, or is no longer being enforced. 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.

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

PENDING RULE

What is a Pending Rule?

The APA, pursuant to 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 and final approval.

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.*

Prior to amending or adopting the rule as a pending rule, all written and oral comments received in the rulemaking, should be fully considered.

The following information is required to be published in the Bulletin when an agency adopts a pending rule:

- A statement giving the reasons for adopting the rule;
- 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;
- The date the pending rule will become final and effective (See Section 67-5224(5)), Idaho Code, noted above);
- An identification of any portion of the rule imposing or increasing a fee or charge.

Agencies are required to republish the affected text of the rule when substantive changes have been made to the proposed rule. It is not always necessary to republish all the text of the pending rule. The Office of Administrative Rules will determine what Section(s) or Subsection(s) that have changed need to be republished. If no changes have been made to the previously published

text, it is not required to republish the text again. For those pending rules that are being adopted as they were initially proposed and have no additional changes, only the Notice of Pending Rule needs to be published.

When Fees or Charges are Imposed.

It is absolutely necessary to specifically describe any fee or charge that will be imposed or increased in a rulemaking when publishing the pending rulemaking notice. (This is also described in the Notice of Proposed Rulemaking.) Another requirement of the APA, pursuant to Section 67-5224(6), Idaho Code, is that each agency must provide the Office of Administrative Rules with a 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 also include a citation of the specific statute that authorizes the agency to impose or increase the fee or charge. OAR then provides the legislature with a compilation of these descriptions submitted by the agencies.

Making Corrections to Rules.

In the past, non-substantive corrections to rules could be made after the Final Rule was published. This is no longer the case. Section 67-5228, Idaho Code, states:

> ***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.*

Therefore, there is no longer a provision to correct **final** rules. Corrections of this nature can only be made during the **pending** rule stage and must be incorporated into a rule docket being promulgated. These types of corrections may be made to a Section(s) of a rule that was not part of the rulemaking. This means that a correction cannot be made to a rule unless such rule is in the promulgation process. The Office of Administrative Rules will advise agency rule writers on how to proceed with publication of the text. Extensive corrections would have to published in the Administrative Bulletin as part of the pending rule, however, minor changes can often be included in the descriptive summary section of the Notice of Pending Rule which makes republication of the rule text unnecessary.

If an agency finds an error in a pending rule that has already been published in the Bulletin, but has not yet been submitted to the legislature for review, a Notice of Correction to Pending Rule may be submitted for publication in the Bulletin. Submission of a correction of this type must meet the deadlines necessary for publication in the Bulletin prior to OAR's submission of all rules to the legislature for review and final approval. Depending on the nature of the correction, the text may or may not have to be republished in the Bulletin and is at the discretion of OAR.

If a mistake that is of a substantive nature has been made by OAR during the publication of a rule in the Administrative Code or during the promulgation of a rule and the rule has met the rulemaking requirements of the APA, OAR will publish a correction notice and the text in the Bulletin without causing the agency to do a rulemaking to correct the mistake.

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 the regular rulemaking process and is in effect.

How does a Rule become a Final Rule?

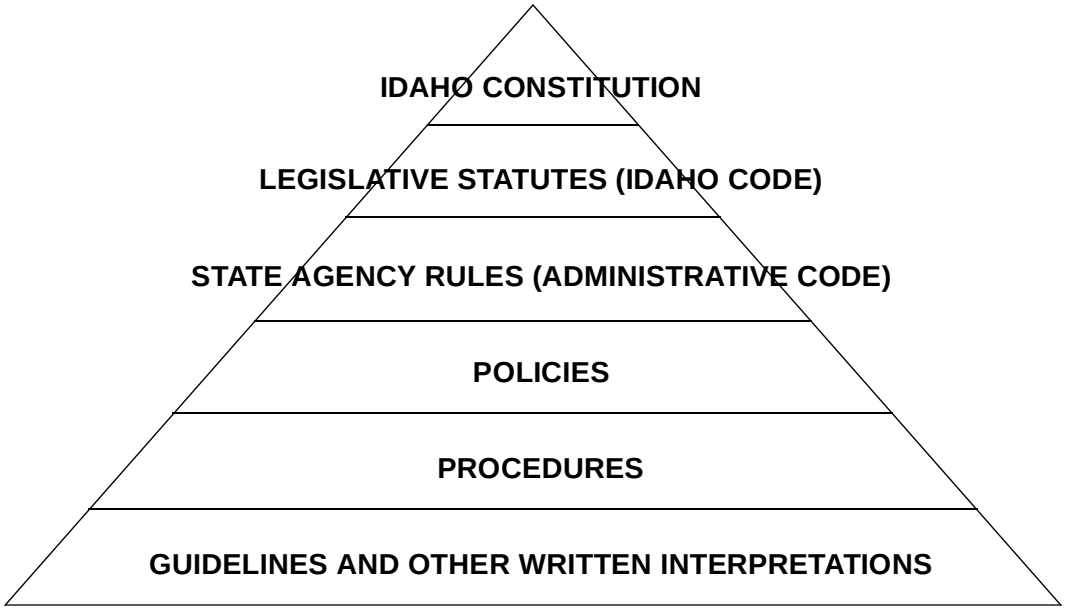
Section 67-5224(5), Idaho Code, states that a pending rule will become final at the end of the legislative session after it has been reviewed and approved by the legislature. No pending rule adopted by an agency will become final and effective before the conclusion of the regular or special legislative 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 will not become final until it has been submitted for review to the Idaho legislature. The legislature may adopt a concurrent resolution approving the rule, however, if the rule or any part of it is not rejected, a concurrent resolution is not necessary for a rule to become final and effective. If the legislature takes no action to reject any part or all of a pending rule being reviewed, the pending rule becomes final and goes into effect at the conclusion of the session or on such date as specified in the rule.

Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted rejecting the rule or any part thereof. Any rules, or parts thereof, that are rejected by a concurrent resolution of the legislature require the publication of a Notice of Final Rule in the Bulletin showing the changes made. The agency will be notified that such action has occurred and it is the responsibility of the agency to publish a Notice of Final Rule reflecting the action taken by the Legislature and the effective date of the 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 Office of Administrative Rules will publish an Omnibus Notice of Rulemaking that lists all pending and pending fee rules that have reveiwed and approved as final rules and all temporary rules which have been extended and will remain in effect beyond the end of the session. This list will also include those rules which have been acted on by concurrent resolution and will give the effective dates of all rules that have completed the review process. If the legislature does not reject a rule, it becomes final without any further legislative action. The rulemaking is then complete and no further agency action is required.

PYRAMID OF 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. 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 subdivisions referred to as departments, divisions, agencies, offices, bureaus, and commissions. Rulemaking is the lawmaking power of these subdivisions. Rulemaking is governed by the Administrative Procedures Act. Rules carry the force and effect of law, and 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. 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 Temporary/Proposed 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 Office review 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** or hard copy and diskette)
5.	*Notice of Negotiated Rulemaking is published in the Idaho 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 either via E-mail or on diskette.
8.	Agency prepares Rulemaking Packet: Notice of Rulemaking (Proposed, Temporary, or Temporary/Proposed), rulemaking checklist, signed copy of PARF, and text of rule in legislative format. (E-mail** or hard copy and diskette)
9.	Agency submits the rulemaking packet via E-mail** or in hard copy and on diskette to OAR. At the same time, the agency files nine (9) copies of the notice and text of the Proposed or Temporary/Proposed Rulemaking with the Legislative Services Office. If doing only a Temporary Rulemaking, one (1) copy of the Temporary Rule is filed with Legislative Services.
10.	OAR checks the rulemaking packet for copies of the signed PARF, checklist, and/or diskette 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 draft copy. A copy of the draft document is then forwarded back to the agency for review.
11.	Agency reviews the rough draft (pdf copy that is emailed) of the docket, 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 (agency's final version of rule) and prepares Notice of Rulemaking - Pending Rule and rulemaking checklist. The text of the rule in legislative format is submitted only if changes are made to the proposed rule, otherwise no rule text is published.
17.	Agency submits the Notice of Rulemaking - Pending Rule and text via E-mail** or in hard copy and on diskette to OAR.

STEP	PROCEDURE
18.	OAR reviews the pending rulemaking checklist, notice and text, if any. OAR prepares docket for publication and generates a draft copy. Draft copy is then forwarded back to the agency for review.
19.	Agency reviews the rough draft (pdf copy) of the docket, makes corrections and 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 after the end of the legislative session at which is it submitted for review and approval.
21.	In December, OAR forwards copies of all published Pending, Pending Fee, and ***Temporary Rules to the Legislative Services Office for distribution to 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. A rule docket, or any part of it, that is rejected must be rejected by concurrent resolution (both Houses) and is a Final Rule. When rejected, the agency must submit a Notice of Final Rule, and any necessary text of the rule, to OAR for publication in the Bulletin. All other Pending Rules approved by the Legislature become Final Rules at the end of the session and require no further action by the agency. Pending Fee Rules must also be approved by concurrent resolution to become effective.
24.	Upon adjournment of the legislative session, OAR publishes an Omnibus Notice of Legislative Action on Pending Rules and Temporary Rules. (This notice is usually published in the May Bulletin 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 using E-mail to submit rules to OAR, the agency must still forward signed hard copies of the PARF forms and rulemaking notices as verification of authenticity. Notices should be signed by the person who has rulemaking authority or a designee of such person, board or commission.**

*****If a rule has been adopted by the agency as a temporary rule but has not been adopted as a pending rule in time to be submitted for review by Legislature for the upcoming session, the Office of Administrative Rules will submit the temporary rule to the Legislature for review and extension, unless advised by the agency to do otherwise. Legislative approval for extension of the temporary rule beyond the end of the legislative session allows the agency to continue to operate under the temporary rule until the end of the next succeeding legislative session or until an expiration date specified in the temporary rule takes effect if that date is 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 include negotiated, temporary, or pending rulemakings.

PROPOSED RULE FLOW CHART

1) Agency inception of rulemaking. Usually based on state or federal legislation.

2) Agency prepares a PARF and submits to DFM in the Governor's Office.

3) DFM reviews PARF and denies or approves the rulemaking. If denied, the rulemaking must cease.

4) Agency prepares proposed rulemaking packet and submits to OAR and LSO.

5) OAR reviews and prepares rulemaking for publication in the Bulletin. Proof copies given to agency.

6) LSO reviews and forwards to Germane Joint Subcommittees

7) Subcommittee may request a hearing. Hearing is held. LSO notifies agency of findings.

8) Proposed rule is published in the Bulletin the first Wednesday of each month.

9) Minimum 14 days to request public hearings and minimum 21 days to receive public comments required.

10) Public hearings, if necessary or scheduled, are held.

11) Agency reviews all written and oral comments that have been submitted or given during the public hearings.

12) Based on public comment, the agency may amend or leave the rule as originally proposed

13) Agency prepares the Pending Rule packet and submits to OAR

14) OAR reviews and prepares for publication in the Bulletin and provides proof copies to agency prior to publication.

15) Pending rule is published in the Bulletin.

16) OAR prepares rule review books for Legislative Committee review.

17) During legislative session, agency representative testifies before committees in both houses on rulemaking.

18) Legislature approves or rejects all or part of the agency pending rule.

19) Legislature closes the session. Sine die. Most pending rules become final on this day - few exceptions.

20) OAR prepares an Omnibus Notice listing all Final Rules and publishes it in the Bulletin.

21) OAR codifies all final rules to the Idaho Administrative Code.

LEGEND

Bulletin - Idaho Administrative Bulletin
DFM - Division of Financial Management
LSO - Legislative Services Office
OAR - Office of Administrative Rules
PARF - Proposed 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

Agency may publish a Notice of Negotiated Rulemaking → Agency may conduct negotiated rulemaking → Go to Step 2

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

Hearings not already scheduled but have been appropriately requested within 14 days → Agency schedules hearings and submits Notice of Public Hearing to OAR → OAR reviews and prepares for publication in the Bulletin → Notice of Public Hearing is published in the Bulletin

↓

Go to Step 10

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

Agency decides to stop the rulemaking → Agency prepares a Notice of Vacation of Rulemaking and submits to OAR → OAR reviews and prepares for publication in the Bulletin → Notice of Vacation of Rulemaking is published in the Bulletin, rulemaking ends

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

Legislature rejects all or part of the rule by concurrent resolution → Agency prepares a Notice of Final Rule and submits to OAR → OAR reviews and prepares for publication in the Bulletin → Notice of Final Rule is published in the Bulletin

TEMPORARY RULE FLOW CHART

1) Agency establishes a need for a temporary rule.

2) Agency prepares PARF and submits to DFM.

3) DFM reviews PARF and denies or approves the rulemaking. If denied, the rulemaking must cease.

4) Agency prepares temporary rulemaking packet and submits to OAR and files one copy with LSO.

5) OAR reviews and prepares temporary rule for publication in the Bulletin and submits proof copy to agency.

6) Temporary rule is published in the Bulletin the first Wednesday of the month.

7) Temporary rule remains in effect until it is replaced by a final rule or extended by the legislature or expires.

8) OAR prepares temporary rules books for Legislative Committee review.

9) Agency representative testifies before committees in both houses.

10) Legislature extends the temporary rule by concurrent resolution.

11) Legislature closes the session. Sine die.

12) OAR prepares an Omnibus Notice of all extended temporary rules and publishes in the Bulletin

13) OAR codifies all extended temporary rules to the Idaho Administrative Code

LEGEND

Bulletin - Idaho Administrative Bulletin
DFM - Division of Financial Management
LSO - Legislative Services Office
OAR - Office of Administrative Rules
PARF - Proposed 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 Rulemaking and submits to OAR. → OAR 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 ↓ OAR codifies the rule by removing temporary from the Code.

Legislature does not extend all or part of the rule - would occur in step10 and before step 12

Legislature rejects part or all of temporary rule by concurrent resolution. → Upon signature of the concurrent resolution, OAR 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 2004

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
04-1	January, 2004	***November 19, 2003**	January 7, 2004	January 28, 2004
04-2	February, 2004	January 7, 2004	February 4, 2004	February 25, 2004
04-3	March, 2004	February 4, 2004	March 3, 2004	March 24, 2004
04-4	April, 2004	March 3, 2004	April 7, 2004	April 25, 2004
04-5	May, 2004	March 31, 2004	May 5, 2004	May 26, 2004
04-6	June, 2004	May 5, 2004	June 2, 2004	June 22, 2004
04-7	July, 2004	June 2, 2004	July 7, 2004	July 28, 2004
04-8	August, 2004	June 30, 2004	August 4, 2004	August 25, 2004
04-9	September, 2004	July 28, 2004	September 1, 2004	September 22, 2004
04-10	October, 2004	****August 25, 2004**	October 6, 2004	October 27, 2004
04-11	November, 2004	October 6, 2004	November 3, 2004	November 24, 2004
04-12	December, 2004	November 3, 2004	December 1, 2004	December 22, 2004

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2005

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
05-1	January, 2005	***November 17, 2004**	January 5, 2005	January 26, 2005
05-2	February, 2005	December 31, 2004	February 2, 2005	February 23, 2005
05-3	March, 2005	February 4, 2005	March 2, 2005	March 23, 2005
05-4	April, 2005	March 4, 2005	April 6, 2005	April 27, 2005
05-5	May, 2005	April 1, 2005	May 4, 2005	May 25, 2005
05-6	June, 2005	April 29, 2005	June 1, 2005	June 22, 2005
05-7	July, 2005	June 3, 2005	July 6, 2005	July 27, 2005
05-8	August, 2005	July 1, 2005	August 3, 2005	August 24, 2005
05-9	September, 2005	July 29, 2005	September 7, 2005	September 28, 2005
05-10	October, 2005	****August 24, 2005**	October 5, 2005	October 26, 2005
05-11	November, 2005	September 30, 2005	November 2, 2005	November 23, 2005
05-12	December, 2005	Octobert 28, 2005	December 7, 2005	December 28, 2004

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

*****Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

PROPOSED/TEMPORARY ADMINISTRATIVE RULES FORM

Agency Name: _____ STARS Agency Code: _____

Contact Person: _____ Phone Number: _____

IDAPA, Title and Chapter Numbers: _____

This Rule is: _____ Proposed _____ Temporary Effective Date: _____

If Temporary Rule:

_____ Protection of the public health, safety, or 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, Section 67-5226(2):

Need for Temporary and/or Proposed Rulemaking:

Proposed Rules Changes (Summary Only):

Interest Group(s) or Citizens Affected:

Estimated Costs for Rulemaking (Publication and Operation Costs):

(DFM's Use Only)

DFM Analyst Comments:

Received Date: _____ Review Date _____ Internal Admin. Rule No.: _____

DFM Analyst Signature: _____Approved: _____Yes _____No

Special Assistant Signature: _____Approved: _____Yes _____No

INSTRUCTIONS FOR COMPLETING THE 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 Divison of Financial Management and returned to the agency BEFORE any documents are submitted to the Office of Administrative Rules or Legislative Services. 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 rule-making 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 offical 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.

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.*

Estimated Costs for Rule Change (Publication and Operational Costs): *Enter the estimated costs of the rulemaking including the $56 per page publication charge for the Idaho Administrative Bulletin along with any operational costs to the agency, board, or commission.*

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 necessitate changes in other rules?
If yes, please specify.

Does this rulemaking incorporate by reference other documents?
Specify an exact description of document(s) incorporated by reference.

HAVE YOU. . .
_____ 1. Had your legal counsel review your rulemaking?
_____ 2. Received Director, Board or Commission approval for the rulemaking?
_____ 3. Provided 9 hard copies of the Notice of Rulemaking and the text of the rule changes to the Legislative Services Office? Provided 1 hard copy if Temporary only?
HAVE YOU INCLUDED . . .
_____ 1. An approved Proposed/Temporary Administrative Rules Form (PARF)?
_____ 2. An electronic version of the Notice and complete text of the rule changes in Microsoft Word?
_____ 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

Docket Number: For all proposed, temporary, and negotiated rulemakings the dokcet 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 numbering of the rulemaking that have been on that chapter during the calendar year.

Example:

The first rulemaking published in 2004 on IDAPA 44, Title 01, Chapter 01 becomes:
Docket No. **44-0101-0401**

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 Administative 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.*

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 pendng rules imposing fees or charges.

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 incorported 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.

HOW TO ACCESS IDAHO'S ADMINISTRATIVE RULES

THE IDAHO ADMINISTRATIVE BULLETIN

The Idaho Administrative Bulletin is published the first Wednesday of each month by the Department of Administration, Office of Administrative Rules, pursuant to Section 67-5203, Idaho Code. The Bulletin contains the executive orders of the governor, official rulemaking notices of intent to promulgate rules, which includes notices of negotiated, proposed, temporary, pending, and final rules and the official rulemaking text of all proposed, temporary and pending rules. It may also contain any other documents required by law to be published in the Bulletin as well as any documents an agency feels needs to be published in the Bulletin.

The administrative rulemaking process in the state of Idaho comprises five distinct activities: Negotiated, Proposed, Temporary, Pending, and Final rulemaking. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking.

State agencies are required to provide public notice of all rulemaking activities and to invite public input in specific rulemaking activities. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin. Notice of proposed rulemakings are provided through the Legal Notice published monthly in local newspapers throughout the state. The Legal Notice provides information regarding an agency's initiation of proposed rulemaking and gives reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time specified in the Legal Notice. The time and manner for submission of comments is specified in the rulemaking notice published in the Bulletin. Comment periods are provided for only in negotiated and proposed rulemakings or, in some instances, when a notice of public hearing has been published regarding a specific negotiated or proposed rulemaking. Comment periods are not provided for in temporary, pending, or final rulemakings. After the comment period closes, the agency considers fully all information submitted regarding the rulemaking. 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 03-1 refers to the first Bulletin issued in calendar year 2003, Volume 04-1 refers to the first Bulletin issued in calendar year 2004, 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 2003 is cited as Volume 03-9; the January 2004 Bulletin is cited as Volume 04-1.

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. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in

the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are not printed in 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 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 Cumulative Rulemaking Index is published quarterly in the Bulletin in January, April, July, and October and lists all rulemakings promulgated since July 1993. The remaining volumes of the Bulletin contain an abridged version of the Cumulative Index that lists those rulemakings that are active rulemakings that have not been finalized. A complete Cumulative Rulemaking Index and the Abridged Rulemaking Index are published electronically on the Internet on the Administrative Rules Home Page and are updated each month with the publication of the Bulletin. They can be found by following the link "Cumulative Rulemaking Index". The index is listed alphabetically by agency.

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. The 2004 Administrative Code is available at these locations on CD-ROM only. The Idaho Administrative Bulletin is available in hard copy at these locations.

INTERNET ACCESS

The Idaho Administrative Code, the monthly Administrative Bulletins, rulemaking indexes, legislative committee books, and this manual are available on the Internet at the following address: **http://www2.state.id.us/adm/adminrules.** This takes you to the Administrative Rules Home Page where the Administrative Code, Administrative Bulletin, the Rulemaking Indexes, the Rule Writer's Manual, Legislative Committee Rules Review Books, and search engine links can be found. Archive versions of the Bulletins are available also. Archive versions of the Adminstrative Code are currently under construction.

RULE NUMBERING AND DOCKETING SYSTEM

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's rules is used. Each agency has a two-digit identification code number known as the **"IDAPA"** number. Most state agencies (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 Page 37 "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 "-" (38-0501-0301). 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. 38-0501-0301"

"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".

"-<u>03</u>01" the "03" denotes the calendar year or, in this example, 2003. 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 2002 and is submitted to OAR in November 2002 for publication in January 2003 will be assigned a docket number using "03" to denote the publication date, not "02" when the rulemaking was started by the agency.

"-03<u>01</u>" 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 2003. Any subsequent rulemakings done on this same chapter that publish in 2003 will be numbered sequentially and indicate the actual number of rulemakings being done on this chapter: i.e. "-03<u>02</u>," "-03<u>03</u>," 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 RULEMAKINGS

Citizen's 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 new administrative rules (see page 30). All such requests and comments 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 notices of intent to promulgate rules (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.

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 Proposed Rulemaking" has already been published in the Bulletin, a separate "Notice of Public Hearing" must be submitted for publication prior to the hearing being held. OAR 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 insure that adequate notice is given to the public. There is 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.

AGENCY RESPONSIBILITIES IN RULEMAKING

PETITION FOR ADOPTION OF RULES

The Idaho Administrative Procedure Act (67-5230, Idaho Code) allows for any person to petition an agency requesting the adoption, amendment, or repeal of a rule. The agency must respond to the requesting party and must either:

a) deny the petition in writing and state the reasons for denying the petition; or
b) initiate rulemaking proceedings in accordance with the APA.

Either of these two actions must begin within twenty-eight (28) days after the submission of the petition, unless the agency's rules are adopted by a multi-member agency board or commission whose members are not full-time officers or employees of the state, in which case the agency must act 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. An agency decision denying a petition is a final agency action.

IDAPA 04.11.01.820, "Idaho Rules of Administrative Procedure of the Attorney General," outlines the requirements that a person must "substantially comply with" when petitioning an agency to initiate rulemaking. Section 821 of these rules outlines the agencies responsibilities for responding to such a petition.

INVALIDITY OF RULE NOT ADOPTED IN COMPLIANCE WITH THIS CHAPTER - TIME LIMITATION

Pursuant to Section 67-5231, Idaho Code:

(1) Rules may be promulgated by an agency only when specifically authorized by statute. A temporary 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.

DECLARATORY RULINGS BY AGENCIES

Pursuant to Section 67-5332, Idaho Code:

(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.

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 for at least two (2) years after the effective date of the rule.

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

The Office of Administrative Rules maintains both electronic and hard copy of all rulemaking documents submitted for publication. However, the Office of Administrative Rules does not maintain copies of comments or hearing information. This information is the responsibiltiy 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 insure 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 newpaper 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, which are also governed by federal programs, 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.

OFFICIAL ADMINISTRATIVE RULES

OFFICIAL RULES

Pursuant to 67-5205(1), Idaho Code:

> . . . 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 . . .

As stated in this section of the Idaho Code, an **OFFICIAL** copy of a rule can **ONLY** be obtained from the Office of the Administrative Rules Coordinator. While agencies may provide copies of their rules to outside entities, they may do so only after obtaining permission from the Rules Coordinator. An agency must be able to prove that use of a special format which differs from that of the Rules Coordinator is necessary for the "...effective performance by the agency of its functions". These copies must also contain a disclaimer provision indicating that the rules being provided are not an "official" copy. It is prudent to stamp "Unofficial Copy" or "For Informational Purposes Only" on any rules provided by the agency that are not obtained from the Office of the Rules Coordinator. Inconsistencies between the "Official" rules and those provided by the agency may result in legal difficulties if the rule is challenged in court. Caution should be exercised when distributing rules, since the intent of the law is to avoid unnecessary costs to the agencies that are associated with the printing of rules.

Copies of rules obtained on line through the Office of Administrative Rules homepage are not classified as "official" rules. The APA has not designated such electronic copies of rules as being an official rule even though these electronic versions are nearly 100% accurate. A statutory change would be required in order to qualify these as the "official" version and therefore, they should be treated as any other paper copy not obtained from OAR.

E-MAIL AND DISKETTES

All **OFFICIAL ADMINISTRATIVE RULES** are maintained by the Office of Administrative Rules. When making amendments or changes to existing rules, the agency **MUST** obtain a copy of the most current rule text from OAR. This will be supplied to the agency either as an e-mail attachment or on a diskette. To ensure the integrity of the rule text and to avoid problems with incorrect text, rule writers should **ONLY** use text supplied by OAR. If the text is forwarded on diskette, the same diskette should be returned to the Office of Administrative Rules.

When making changes to an existing rule, requests should be made for only those Sections which will be amended and published, unless the entire chapter is needed. When numerous Sections are being amended it is often easier to work with the entire chapter and simply delete those Sections that are not needed. If sent by e-mail, OAR may request that a hard copy or diskette be sent.

PROOF COPIES

Prior to publication of the Administrative Bulletin, the Office of Administrative Rules will forward a draft copy of the docket(s) to the submitting agency. This draft copy is sent as a PDF file using e-mail. The agency will usually have three to five days to review the draft copy, make corrections or changes, and return the document. If the changes or corrections are minor, they can be done in red ink on a hard copy of the PDF file. If the changes are extensive, please contact the Office of Administrative Rules on how to proceed with making and submitting the corrections. A signed or initialed copy of the proof document should be returned to the Office of Administrative Rules. These initialed copies are filed with the original submission and become part of the permanent docket record kept by OAR.

Mistakes can occur during the transcription of the rule text prior to publication in the Bulletin. It is extremely important that the rule writer who is making the changes carefully review the proof copies to ensure the rule is being published as the agency intends. As the program experts, you are the last line of defense in making sure the final version of the rule is correct.

In order to make a substantive change to a rule once it is approved and adopted as final requires another rulemaking. This is both costly and time consuming, can cause additional work and may result in unexpected legal problems. However, if a transciptional or typographical error is found in the pending rule after it has been published in the Bulletin but has not yet been approved as a final rule by the legislature or is in the process of being reviewed by a legislative committee, it is possible to publish a Notice of Correction to fix the mistake. If this occurs, contact OAR as soon as possible so the proper course of action can be taken to correct the pending rule. Once the legislature adjourns it is too late too make a correction of this type.

RULE WRITING

STYLE, FORMAT, AND CONTENT

I. INTRODUCTION

Before beginning to write an administrative rule, the rule writer should identify the statutory authority, purpose, intended results, objectives, and outline of the rule.

The rule writer should always be cognizant that the basic purpose of a rule is to balance statutory mandates of the Legislature with constitutional or federal mandates, governor's policy, and the agency mission.

Fully understanding the intended results of the rule is critical to its effective composition. The rule writer should be able to identify clearly whether the intent is to restrict activities or 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 legal authority, title and scope, written interpretations, administrative appeals, incorporation by reference, mailing address, public records act compliance, and definitions sections. 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 sections that follow provide rule writers guidance in composing, organizing, and formatting rules. This manual should be fully understood before beginning to write. It incorporates standardized style, format, and numbering requirements in accordance with state law and taken from national guidelines, previous guidelines of the State Supreme Court Law Library, and some of the same standards used in drafting legislation.

II. GENERAL RULE WRITING GUIDELINES

A rule writer is often confronted with the problem of incorporating the purpose of the rule into coherent, readable text. The writing style described in this manual is intended to aid the rule writer in avoiding ambiguity. Rules written with this style should provide understandable terminology using the clearest language possible. 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 previous text, if any, as possible. Any new text must link with previous text to form a consistent and clear statement 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. CONSISTENCY

The first principle a rule writer must employ is consistency. Administrative rule style should avoid unnecessary variation in sentence form and should use identical words for the expression of identical ideas, even to the point of 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 when writing rules.

Do Not Say:	**Say:**
Each automobile owner shall register his car with the Division of Motor Vehicles.	Each motor vehicle owner shall register his motor vehicle with the Division of Motor Vehicles.

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

Do Not Say:	**Say:**
Each tank shall have a twenty (20) gallon tank for fuel.	Each tank shall 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:		**Say:**	
01.	**Duties**. The commission shall:	**01.**	**Duties**. The commission shall:
a.	Screen applicants;	**a.**	Screen applicants;
b.	It sets fees and other neat stuff; and	**b.**	Set fees; and
c.	Submitting reports.	**c.**	Submit reports.

B. 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 and sentences. 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.

C. 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," or other variations of these terms.

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

Do Not Say:	**If You Mean:**
vehicles	automobiles
firearms	handguns
aircraft	helicopters

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

Do Not Say:	**If You Mean:**
Water resources loan plan	A loan plan for water resources

Avoid the use of split infinitives.

Do Not Say:	**If You Mean:**
If it is necessary under this section to promptly reply.	If 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:	**Say:**
John saw Jane walking across the street.	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:	**Say:**
After the chairman appoints the director he shall administer this rule.	After the chairman appoints the director, the director shall administer this rule.

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

Do Not Say:	**Say:**
Each applicant for a license in Idaho...	Each license applicant from Idaho...
	Unless You Mean: Each applicant for a license to practice in Idaho...

D. STYLE

Remember, the three basic objectives of rule writing 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. Every rule should be easily understood. In most cases, understanding is enhanced with complete definitions. Conversational tones should be avoided. Use precise and simple language. 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.

III. FORMAT AND FORMAT RELATED TOPICS

A. DO'S AND DON'TS

DO use FULL justification in formatting

NO unusual fonts - Use only a standard 10 to 12 point font

NO extra bolding

NO headers or footers

NO page numbering

NO page breaks

DO use one (1) TAB only, even at the Subsection level

The Office of Administrative Rules 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. 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/UNDERLINE)

When making amendments to an existing 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. When removing and adding text, strike out text being omitted first and then add and underline the new text, as show in the following example. When adding text only, simply insert the text in its proper place and underline.

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)~~(1-3-99)T

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

In most cases when amending rules, the **ENTIRE** major section must be published, even if 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 sudivisions 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. 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 Office of Administrative Rules 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 (1-1-01) **NOT** (01-01-01)
>
> 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) spaces between the parentheses.
>
> If the rule is temporary, add a "T" at the end of the effective date outside the parentheses.

Example for 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. ~~(10-1-91)~~(1-3-99)T

Example for 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. ~~(10-1-91)~~( )

Example for 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 for 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 an agency's rulemaking authority pursuant to Idaho Code.)*

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 would refer to any written statements given by the agency which pertain to an interpretation of the rule or the documentation for compliance with the rule.)*

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.)*

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. DEFINTIONS. *(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.)*

It is no longer necessary for an agency to include the following sections in its rule. 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".)

SEVERABILITY. (This allows for a part of rule to be found invalid without affecting 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 and is allowed only after consulting with the Office of Administrative Rules. 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 text and 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. (7-1-96)

2) Subsection. The first subdivision level is called a ***"subsection"*** and breaks down a major section and consists of a two (2) digit number, has one (1) tab before the subsection number, has one (1) tab after the subsection number and requires a **"catchline"** that gives a brief but accurate description of the subsection. Capitalize the beginning of each word in the catchline and use one (1) space before starting the text. The number and catchline are in bold text.

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. [*Flush Right*](7-1-96)

Subsections are used only when multiple subdivisions follow a major section or another subsection. This should follow a standard outline format. If there is not a second subsection (02) following the first (01) subsection, the rule writer should try to make the text (01) part of the major section and not its own individual subsection. This is true for all subsequent subdivisions.

3) Paragraph. The second subdivision level is called a ***"paragraph"*** and breaks

down a subsection. The paragraph is a lower case alphabetic level (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. (7-1-96)

4) Subparagraph. The third subdivison 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.

Subdivisions past the subparagraph level (lower case roman numeral level) must be approved by the Office of Administrative Rules, **PRIOR** to publication. The subsequent numbering repeats the basic alpha/numeric pattern using parentheses. For example: 010.01.a.i.(1)(a)

F. RESERVED SECTIONS

Reserved sections can **only** be utilized at the major section level. Single or multiple sequential sections may be reserved. Subsections, paragraphs and subparagraphs cannot be held as "RESERVED".

Example:

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

G. BREAK IN CONTINUITY OF SECTIONS

When making amendments to rules, the entire chapter does not need to be published. In most cases only those sections with amendments need to be published. The individual sections affected 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 the agency submits text containing amendments to existing rules to the Office of Administrative Rules, this statement must appear between all sections being published that are not sequential.

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 rewriting it. This must be done as two separate rulemakings and requires two rulemaking dockets. One docket repeals the existing chapter, the second docket rewrites the new chapter. The rewritten chapter is published as a new rule and is not required to be published in legislative format (no underlining of new text). In most cases this is a more cost effective method than striking out entire sections and underlining many new changes because less text is actually published. Also, rewriting the chapter can serve to clarify the context of the rule. However, it is important to remember that a complete rewrite of the chapter subjects the entire rule to the public participation requirement for proposed rulemaking. 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 format for rulemaking should be used to avoid this situation.

I. RENUMBERING

In most cases when making an amendment to a rule, agencies are required to publish the entire **MAJOR SECTION** containing the amendment. 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.

The following 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.

Example of renumbering of rules:

OLD RULES

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 form 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 determined 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).

NEW RULES

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 form 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. (11-16-95)

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. (11-16-95)

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. (11-16-95)

01. Return To Alternate Care. If the child returns to alternate care, the Department shall be notified immediately of the correct payee. (11-16-95)

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. (11-16-95)

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. (11-16-95)

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. (11-16-95)

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. (11-16-95)

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. (11-16-95)

339. -- 350. (RESERVED).

IV. GENERAL GUIDELINES FOR CONTENT AND CONTENT RELATED ISSUES

A. NUMBER AND GENDER

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 verse, 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:	**Say:**
Applicants shall be more than 21 years old.	Applicants shall 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 tabular form, 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.

$5.00
$10.13
$201.00
$2,100.25

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.

9 a.m., not 9:00 a.m.
10 p.m. not 10:00 p.m.
10:15 a.m.
10:30 p.m.
12 noon, not 12 a.m.
12 midnight, not 12 p.m.

F. REFERENCES TO IDAHO CODE, IDAHO ADMINISTRATIVE CODE, AND OTHER LAWS

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

Title 67, Chapter 52, Idaho Code, Sections 67-5201 through 67-5203
IDAPA 44.01.01.000
28 U.S.C. Section 105(a)
42 CFR 2.1

G. FIRST, SECOND, ETC.

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

Do Not Say:	**Say:**
first (1st)	first

H. SINGULAR VERB TO EXPRESS DOLLARS

References to dollars should be used with a singular verb.

Do Not Say:	**Say:**
a. There are appropriated $50,000 to this division.	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:	**Say:**
a. All persons except those eighteen (18) years old or older shall...	a. Each person under eighteen (18) years old shall...

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, commonly know as "legalese". The most important of these 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:	**Say:**
Each corporation and/or bank shall...	Each corporation, bank, or both, shall...
...red, white, and/or blue...	...red, white, blue, or all of them...

"Shall" is imperative or mandatory and should be used when indicating an obligation to act.

Do Not Say:	**Say:**
a. The director will submit a budget.	a. The director shall 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:	**Say:**
a. The director is authorized to issue an order.	a. The director may issue an order.

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 shall" 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 therefore 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:	**Say:**

The commissioner shall issue a certificate to an insurance company.	The commissioner shall issue a 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:	**Say:**
All qualified employees shall...	Qualified employees shall...

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.

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 shall 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, shall provide . . .

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

Do Not Say:	**Say:**
If the complaint is filed . . .	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 shall be composed of ten (10) members.

"Comprise" suggests including or containing. The whole comprises the parts, the parts do no 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 made by administrative agencies in this state 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 IN RULES

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 IDAPA, Title, and Chapter.

Example: Section 100
Subsection 100.01
Paragraph 100.01.a.
Subaragraph 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

Federal regulations govern many state programs authorized by the Legislature. In order for a state agency to administer the program, it must often adopt the regulations as an agency administrative rule. Other agency programs may also require the use of uniform standards, codes, or rules established by the federal government, another state government, another state agency, or some national private organizations or associations. Usually these national standards, codes, or rules are readily available to the public through various publications such as the Code of Federal Regulations (CFR), national trade organizations' publications or via the Internet. In most cases, it would be cumbersome, expensive, and redundant to include the text of large segments of regulations, standards or uniform codes in agency rules in the Idaho Administrative Code. Therefore, the APA (Section 67-5229, Idaho Code) permits, and the Office of Administrative Rules strongly encourages, agencies to incorporate such standards, codes, or rules by reference.

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

An agency may incorporate by reference in its rules, **without republication**, all or any part of a code, standard or rule if the incorporation of its text in the agency rules would be **unduly cumbersome, expensive, or otherwise inexpedient.**

A rule writer should keep in mind that segments of agency policy manuals cannot be written and merely incorporated into the agency rules. Also, rule writers would avoid "meshing" or merging documents incorporated by reference into their agency's rules as numbering, format and styling differences of various documents often interfere with consistency.

A. HOW TO ADOPT A DOCUMENT BY REFERENCE INTO 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, Idaho Code, if otherwise unavailable, one (1) copy of the incorporated material must be provided to the Idaho Supreme Court Law Library.** Although the law says "...if otherwise unavailable..", the State Law Librarian has requested that all incorporated documents be filed with the State Law Library regardless of its availability.

The Rules of the Administrative Rules Coordinator require that agencies include a section in each rule for listing documents that are or may be adopted through the incorporation by reference provision of the APA. The incorporated material shall be indentified with specificity and shall include the date when the code, standard, or rule was published, approved, or became effective. 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, "2001 Standards for Grammar, Style, Numbering and Structure, 5th Edition," published by the National Association of Administrative Codes and Registers. (7-1-02)

02. Availability Of Referenced Documents. Copies of the "2001 Standards for Grammar, Style, Numbering and Structure, 5th Edition," are available at the following locations: (7-1-02)

a. NASS, 1400 E. 55th Street, Washington, D.C. 90016-4400. (7-1-02)

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051. (7-1-02)

c. Department of Administration, 650 W. State St., Boise, ID 83720-0306 (7-1-02)

d. Web address: www.nass.org/ACR/index/standard.htm (7-1-02)

B. ADDITIONAL INFORMATION

Rules shall **NOT** incorporate by reference future materials, e.g. *"...this rule incorporates the 2001 edition of the Uniform Commercial Code* ***and all future editions."*** Rule writers should keep in mind that the courts have invalidated prospective incorporations by reference. This means that a document that is incorporated by reference must be date and edition specific amd referenced that way. This includes open-ended incorporation statements that do not refer to a specific edition or source to which the public may refer. And, if a rule writer subsequently wishes to incorporate amendments to previously incorporated material, it shall comply with the rulemaking procedures of the APA.

It is also prudent for the agency to check with the germane joint subcommittee that oversees it regarding the incorporation by reference of documents that are produced by the agency. This should be done to ensure that the legislature has no objection to the incorporation of this type of material. It is not unusual for the legislature to reject a rulemaking during the review process that has incorporated documents that were created by the agency. Such cases have resulted in the agency being required to initiate another rulemaking to put the text of the document in question into the rule. It should be noted that such cases usually involve documents that the agency itself has produced and generally does not include the incorporation of federal regulations, or the standards or codes of a national association or other nationally recognized organization.

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401 (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)*.

HEARING SCHEDULE: Public hearings 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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401 *(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 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 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 substance and purpose 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.)

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the *(Bulletin publication date)* Idaho Administrative Bulletin, (*include the volume number and page numbers)*. **OR** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because (*include an explanation as to why negotiated rulemaking was not conducted)*.

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 or approved*).

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

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

docket no. 44-0102-0401 *(oar will Assign*)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has inititated 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 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 following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

(Include a descriptive summary of the substance and purpose 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.)

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, (*include the volume number and page numbers)*. **OR** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because (*include an explanation as to why negotiated rulemaking was not conducted).*

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 or approved*).

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

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401 *(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 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 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 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 statement of the finding and its supporting reasons for adopting the temporary rule and a summary of the substance and purpose 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)

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, (*include the volume number and page numbers)*. **OR** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because (*include an explanation as to why negotiated rulemaking was not conducted).*

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 21 days after the publication of the Administrative Bulletin).*

DATED this (*include the date the document is signed, approved or adopted*)

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

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401 *(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 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 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 all dates, times, and locations of any scheduled hearings)

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 statement of the finding and its supporting reasons for adopting the temporary rule and a summary of the substance and purpose 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)

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, (*include the volume number and page numbers)*. **OR** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because (*include an explanation as to why negotiated rulemaking was not conducted).*

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 21 days after the publication of the Adminsitrative Bulletin).*

DATED this (*include the date the document is signed, approved or adopted*).

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

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401 *(OAR will assign)*

NOTICE OF RULEMAKING - 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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - 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)*.

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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0402
(Use the Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - 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.)

(You may also include the following example text, if applicable:

Example:
(Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.)

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)*.

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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(Use the Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - 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)

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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0402
(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - 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 agncy'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.)

(You may also include the following example text, if applicable:

Example:
(Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.)

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)

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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING -

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 pubished 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)

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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0402
(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING - 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.)

Example Text, if applicable:
(Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.)

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.

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)*

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(Include the Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING -

PENDING 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 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.)

Example Text, if applicable:
Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. 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 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)*.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to 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

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0402
(Use Docket No. previously assigned to this rulemaking)

NOTICE OF RULEMAKING -

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.)

Example Text, if applicable:
Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

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.

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	*Mailing AddressCity, State and Zip*
Physical Address	*Phone, fax*

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(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 all dates, times, and locations of scheduled hearings)

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 and phone number)*.

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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(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 all dates, times, and locations of scheduled hearings)

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 AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact (*include the appropriate name and phone number)*.

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)*.

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)

IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(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)

IDAPA 44 - DEPARTMENT OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(*Use Docket No. previously assigned to this rulemaking)*

NOTICE OF 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 previoulsy 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 rescinding 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)

IDAPA 44 - DEPARTMENT OF ADMINISTRATIVE RULES

44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO

DOCKET NO. 44-0102-0401
(*Use Docket No. previously assigned to this rulemaking)*

NOTICE OF 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 this rulemaking:

(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.

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. 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 rule making [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 a 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) the text of the proposed rule prepared in legislative format;

(d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

(e) 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;

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

(g) 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) At the same time that notice of proposed rulemaking is filed with the coordinator, the agency shall provide the same 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) If the germane joint subcommittee notifies the agency 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, that the subcommittee intends to hold a hearing on the proposed rulemaking within fourteen (14) days, the agency shall extend the comment period for such additional time as required to receive comments from the subcommittee. The notification from the germane joint subcommittee to the agency shall be sent to the agency and shall also be published in the bulletin.

(3) An agency shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a proposed rule if, within fourteen (14) days of the receipt of the proposed rule, 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 in the bulletin. In addition, 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; and

(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.

(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.

Sections 67-5240 through 67-5279 are not printed here. These sections deal with contested case proceedings, declatory 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.

These rules are current as of this publication. Please be advised that all rules are subject to change and these rules may become subsequently outdated. Please refer to the Administrative Code on line for current rules.

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 rule-making 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 rule-making 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: (7-1-93)

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 sections'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)

Subchapter C--Rulemaking
Rules 800 through 860--Rulemaking
Rules 800 through 809--Introduction

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 rule-making 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 rule-making. (7-1-93)

02. Authority. The statutory authority for the rule-making. (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 rule-making. (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 RULE-MAKING (Rule 820).
This rule addresses petitions to initiate rule-making as described by Section 67-5230, Idaho Code. (7-1-93)

01. Requirement. Any person petitioning for initiation of rule-making 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 rule-making. 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 rule-making, the agency shall initiate rule-making 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 rule-making 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 rule-making. 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 rule-making 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 rule-making 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 rule-making. 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 RULE-MAKING (Rule 830).

01. Content. Every notice of proposed rule-making 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 rule-making; (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 rule-making 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 rule-making. (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 rule-making 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 RULE-MAKING RECORD (Rule 834).
The agency shall maintain a record of each rule-making proceeding. (7-1-93)

01. Contents. The record for a rule-making proceeding shall include: (7-1-93)

a. Copies of all publications in the Idaho Administrative Bulletin relating to that rule-making 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 rule-making, including any summaries prepared for the agency in considering the rule-making. (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 rule-making and following any oral presentation on the rule-making, 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 rule-making 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 2004

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