

IDAHO ADMINISTRATIVE BULLETIN

Table of Contents

February 3, 2010 -- Volume 10-2

PREFACE	2
THE OFFICE OF THE GOVERNOR	
Executive Order No. 2009-17	
Establishing the Governor's Health Policy Implementation Committee	11
IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION	
26.01.20 - Rules Governing the Administration of Park and Recreation Areas and Facilities	
Docket No. 26-0120-0902	
Notice of Rulemaking - Vacation of Proposed Rulemaking	13
Docket No. 26-0120-0903	
Notice of Rulemaking - Vacation of Proposed Rulemaking	14
Docket No. 26-0120-0904	
Notice of Rulemaking - Vacation of Proposed Rulemaking	15
IDAPA 27 - BOARD OF PHARMACY	
27.01.01 - Rules of the Idaho State Board of Pharmacy	
Docket No. 27-0101-0904	
Notice of Rulemaking - Adoption of Pending Rule	16
IDAPA 35 - IDAHO STATE TAX COMMISSION	
35.01.02 - Sales Tax Administrative Rules	
Docket No. 35-0102-1001	
Notice of Intent to Promulgate Rules - Negotiated Rulemaking	21
SECTIONS AFFECTED INDEX	22
LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS	23
CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES	24
SUBJECT INDEX	265

Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Notice of Rulemaking published in the Bulletin. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 08-1 refers to the first Bulletin issued in calendar year 2008; Bulletin 09-1 refers to the first Bulletin issued in calendar year 2009. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 09-1 refers to January 2009; Volume No. 09-2 refers to February 2009; and so forth. Example: The Bulletin published in January 2009 is cited as Volume 09-1. The December 2008 Bulletin is cited as Volume 08-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The Idaho Administrative Code is published once a year and is a compilation or supplemental 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 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 only published in the Bulletin and **not** printed in the Administrative Code.*

*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.*

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a "Notice of Proposed Rulemaking" in the Bulletin. This notice must 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.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate a proposed rulemaking if it decides not to proceed beyond the proposed rulemaking step, and stops the formal rulemaking process.

TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- 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;*

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

State law requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as the proposed rule, the rulemaking can be done concurrently as a proposed/temporary rule. Combining the rulemaking allows for a single publication of the text.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending Rulemaking". This includes:

- a) a statement giving the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective;*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

Agencies are required to republish the text of the rule when substantive changes have been made to the 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 change 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. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Pending Rulemaking" is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is in effect and enforceable.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule reviewed by the legislature and not rejected, amended or modified becomes final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls, Twin Falls, Lewiston and East Bonner County Library.

***Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>*

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

*The **Idaho Administrative Bulletin** is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.*

*The **Idaho Administrative Code**, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes a table of contents, reference guides, and a subject index.*

***Individual Rule Chapters** and **Individual RuleMaking Dockets**, are specific portions of the Bulletin and Administrative Code produced on demand.*

***Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>*

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

*Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering system. Each state agency has a two-digit identification code number known as the “**IDAPA**” number. (The “**IDAPA**” Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit “**TITLE**” number is assigned. There are “**CHAPTER**” numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:*

IDAPA 38.05.01.200.02.c.ii.

*“**IDAPA**” refers to Administrative Rules in general 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.*

*“**38.**” refers to the Idaho Department of Administration*

*“**05.**” refers to Title 05, which is the Department of Administrations’s Division of Purchasing*

*“**01.**” refers to Chapter 01 of Title 05, “Rules of the Division of Purchasing”*

*“**200.**” refers to Major Section 200, “Content of the Invitation to Bid”*

*“**02.**” refers to Subsection 200.02.*

*“**c.**” refers to Subsection 200.02.c.*

*“**ii.**” refers to Subsection 200.02.c.ii.*

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0901). 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 rule docket number:

"DOCKET NO. 38-0501-0901"

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

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), Rules of the Division of Purchasing (Chapter 01).

"0901" denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in calendar year 2009. A subsequent rulemaking on this same rule chapter in calendar year 2009 would be designated as "0902". The docket number in this scenario would be 38-0501-0902.

Within each Docket, only the affected sections of chapters are printed. (See Sections Affected Index in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

(BREAK IN CONTINUITY OF SECTIONS)

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection of a rule that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of these rules." OR "...in accordance with Subsection 201.06.c. of these rules."

The citation may also include the IDAPA, Title, or Chapter number, as follows"

"...in accordance with IDAPA 38.05.01.201..."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the rule.

"01" denotes the Chapter number of the rule.

"201" denotes the main Section number of the rule to which the citation refers.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, "Rules Governing Capitol Mall Parking."

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2009

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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010

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

****Last day to submit 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.***

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 01	Accountancy , Board of
IDAPA 38	Administration , Department of
IDAPA 44	Administrative Rules Coordinator , Office of the
IDAPA 02	Agriculture , Idaho Department of
IDAPA 40	Arts , Idaho Commission on the
IDAPA 03	Athletic Commission
IDAPA 04	Attorney General , Office of the
IDAPA 53	Barley Commission , Idaho
IDAPA 51	Beef Council , Idaho
IDAPA 07	Building Safety , Division of Electrical Board (07.01) Plumbing Board (07.02) Building Codes & Manufactured Homes (07.03) Building Code Advisory Board (07.03.01) Public Works Contractors License Board (07.05) Uniform School Building Safety (07.06) HVAC Board (07.07)
IDAPA 43	Canola and Rapeseed Commission , Idaho
IDAPA 28	Commerce , Idaho Department of
IDAPA 06	Correction , Board of
IDAPA 19	Dentistry , Board of
IDAPA 08	Education , Board of and Department of
IDAPA 10	Engineers and Land Surveyors , Board of Professional
IDAPA 58	Environmental Quality , Department of
IDAPA 12	Finance , Department of
IDAPA 13	Fish and Game , Department of
IDAPA 14	Geologists , Board of Registration of Professional
IDAPA 15	Governor , Office of the Idaho Commission on Aging (15.01) Idaho Commission for the Blind and Visually Impaired (15.02) Idaho Forest Products Commission (15.03) Division of Human Resources and Personnel Commission (15.04) Idaho Liquor Dispensary (15.10) Idaho Emergency Communications Commission (15.06) Emergency Response Commission (15.13)

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 48	Grape Growers and Wine Producers Commission, Idaho
IDAPA 16	Health and Welfare, Department of
IDAPA 41	Health Districts, Public
IDAPA 45	Human Rights Commission
IDAPA 17	Industrial Commission
IDAPA 18	Insurance, Department of
IDAPA 05	Juvenile Corrections, Department of
IDAPA 09	Labor, Idaho Department of
IDAPA 20	Lands, Department of
IDAPA 30	Libraries, Commission for
IDAPA 52	Lottery Commission, Idaho State
IDAPA 22	Medicine, Board of
IDAPA 23	Nursing, Board of
IDAPA 24	Occupational Licenses, Board of (24.20) Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians (24.03) Contractors Board, Idaho State (24.21) Cosmetology, Board of (24.04) Dentistry, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board, Idaho (24.22) Morticians, Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Occupational Therapy Licensure Board (24.06) Optometry, Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, Board of (24.11) Professional Counselors and Marriage & Family Therapists, Board of (24.15) Psychologist Examiners, Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of (24.19) Social Work Examiners, Board of (24.14) Speech and Hearing Services Licensure Board(24.23)
IDAPA 25	Outfitters and Guides Licensing Board
IDAPA 50	Pardons and Parole, Commission for
IDAPA 26	Parks and Recreation, Department of
IDAPA 27	Pharmacy, Board of

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 11	Police, Idaho State
IDAPA 29	Potato Commission, Idaho
IDAPA 55	Professional-Technical Education, Division of
IDAPA 59	Public Employee Retirement System of Idaho (PERSI)
IDAPA 31	Public Utilities Commission
IDAPA 56	Rangeland Resources Commission, Idaho
IDAPA 33	Real Estate Commission, Idaho
IDAPA 34	Secretary of State, Office of the
IDAPA 57	Sexual Offender Classification Board
IDAPA 49	Shorthand Reporters, Board of Certified
IDAPA 36	Tax Appeals, Board of
IDAPA 35	Tax Commission, State
IDAPA 39	Transportation Department, Idaho
IDAPA 54	Treasurer, Office of the State
IDAPA 21	Veterans Services, Division of
IDAPA 46	Veterinary Medical Examiners, Board of
IDAPA 47	Vocational Rehabilitation, Division of
IDAPA 37	Water Resources, Department of
IDAPA 42	Wheat Commission

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2009-17

ESTABLISHING THE GOVERNOR'S HEALTH POLICY IMPLEMENTATION COMMITTEE

WHEREAS, the Idaho Health Care Summit (Summit) was convened in August 2007 to identify and address the State's most pressing health care issues; and

WHEREAS, the Summit identified many health care issues facing Idahoans today and recommendations for addressing these issues; and

WHEREAS, one of the issues identified by the Summit was the need to build Idaho's health care workforce, especially as the need for physicians, nurses and other skilled professionals increases across the State; and

WHEREAS, the Summit also identified prevention and early intervention as important aspects of the continuum of care that cannot be overlooked; and

WHEREAS, the Summit confirmed the need for affordable, comprehensive insurance coverage in Idaho; and

WHEREAS, the Summit recognized the important role that personal responsibility plays in health care today, including, but not limited to, individuals making healthy choices; and

WHEREAS, the Governor established the Select Committee on Health Care under Executive Order 2007-13 to review and evaluate the recommendations of the Summit; and

WHEREAS, the Select Committee has four priorities to improve access, quality and efficiency of care and consequently reduce the costs of health care in Idaho; and

WHEREAS, the State has a vested interest in implementing workable, realistic solutions to health care issues, including the four priorities identified by the Select Committee;

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby:

- 1. Create the Governor's Health Policy Implementation Committee (Committee);*
- 2. The Committee shall not exceed seven (7) members including the chair;*
- 3. Members of the Committee shall be appointed by and serve at the pleasure of the Governor;*
- 4. The chair of the Committee shall be appointed by and serve at the pleasure of the Governor;*
- 5. The Committee shall provide leadership and accountability in the implementation of these policy initiatives:*
 - a. Improving voluntary enrollment of children eligible for Medicaid or CHIP;*
 - b. Expanding medical residency opportunities in Idaho;*
 - c. Developing a patient-centered medical home model that can be replicated across the state; and*
 - d. Improving health quality through the development of health information technology and exchange.*

6. *The Committee shall report its progress to the Governor quarterly; and*
7. *Committee members will serve without compensation.*

This Executive Order shall cease to be effective December 31, 2011.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 15th day of December in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred thirty-fourth and of the Statehood of Idaho the one hundred twentieth.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

DOCKET NO. 26-0120-0902

NOTICE OF RULEMAKING - VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), 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 67-4249, Idaho Code.

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

Idaho Park and Recreation Board recommended the Department not go forward with this rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of rulemaking, contact Nancy Merrill, 208.514.2250.

DATED this 16th day of December, 2009.

Nancy C. Merrill, Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue, Boise, ID 83716
Mailing: PO Box 83720, Boise, ID 83720-0065
Telephone: 208.334.4199 / FAX: 208.334.3741

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

DOCKET NO. 26-0120-0903

NOTICE OF RULEMAKING - VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), 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 67-4249, Idaho Code.

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

Idaho Park and Recreation Board recommended the Department not go forward with this proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of rulemaking, contact Nancy Merrill, 208.514.2250.

DATED this 16th day of December, 2009.

Nancy C. Merrill, Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue, Boise, ID 83716
Mailing: PO Box 83720, Boise, ID 83720-0065
Telephone: 208.334.4199 / FAX: 208.334.3741

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

DOCKET NO. 26-0120-0904

NOTICE OF RULEMAKING - VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), 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 67-4249, Idaho Code.

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

After further review, the Park and Recreation Board recommended not to go forward with this rule. Parks, if a fire is eminent, evacuate people and close the park regardless of this rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of rulemaking, contact Nancy Merrill, 208.514.2250.

DATED this 16th day of December, 2009.

Nancy C. Merrill, Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue, Boise, ID 83716
Mailing: PO Box 83720, Boise, ID 83720-0065
Telephone: 208.334.4199 / FAX: 208.334.3741

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0904

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, 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 54-1717, Idaho Code.

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:

In response to the public comment that was received, the Board has determined to adopt the pending rule which includes a change in text from the proposed rule. The change in text is necessary to clarify requirements regarding the receipt, verification, and storage of donated drugs and who may receive and dispense donated drugs.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. All sections that published as proposed in the October Bulletin are being republished in this Bulletin to show the changes made to the pending rule. The complete text of the proposed rule was published in Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 247 through 250.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

DATED this 21st day of January 2010.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
3380 Americana Terrace
Suite 320
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

DOCKET NO. 27-0101-0904 - ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized text that is underscored is new text that has been added to the pending rule.

All sections have some changes, therefore, the entire docket is being reprinted.

The text of the proposed rule was published in the Idaho Administrative Bulletin, **Volume 09-10, October 7, 2009, Book 2, pages 247 through 250.**

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.

THE FOLLOWING IS THE AMENDED PENDING RULE TEXT FOR DOCKET NO. 27-0101-0904

366. -- ~~400379~~. (RESERVED).

380. LEGEND DRUG DONATION – STANDARDS AND PROCEDURES.

01. Drug Donation Criteria. In order to be eligible for donation, drugs must meet the following criteria: ()

a. The drug name, strength, lot number, and expiration date must appear on the drug package or label. ()

b. Donated drugs must be approved by the federal Food and Drug Administration and: ()

i. Be in the original *unit dose* packaging; or ()

ii. Be oral or parenteral drugs in sealed single-dose containers approved by the federal Food and Drug Administration; or ()

iii. Be topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or ()

iv. Be parenteral drugs in sealed multiple-dose containers approved by the federal Food and Drug Administration from which no doses have been withdrawn. ()

c. Donated drugs must not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug wholesaler or manufacturer. ()

d. Donated drugs must not require storage temperatures other than normal room temperature as specified by the manufacturer or United States Pharmacopoeia. ()

e. Donated drugs must not be the subject of federal Food and Drug Administration restricted drug distribution programs including, but not limited to, thalidomide and lenalidomide. ()

02. Donation Standards. ()

a. A licensed pharmacist, physician, *physician assistant*, or an *advanced practice professional nurse* with *prescriptive authority* at the *qualifying* charitable clinic or center will be responsible for defining a specified set

of drugs that will be included in their formulary. ()

b. Donating *nursing homes* may only donate drugs that appear on the *qualifying* charitable clinic or center's formulary. ()

c. A licensed pharmacist, nurse, physician, or *physician assistant* from the donating *nursing home* must sign and date a manifest before delivery of the donated drugs to the *qualifying* charitable clinic or center that: ()

i. Certifies that the *donated* drugs have been maintained in a secure and temperature controlled environment that meets the drug manufacturers' recommendations and the United States Pharmacopoeia standards; ()

ii. Certifies that the donated drugs have been continuously under control of a health care professional and have never been in the custody of a patient or other individual; ()

iii. Certifies that the donating *nursing home* has only donated drugs on the *qualifying* charitable clinic or center's formulary; ()

iv. Certifies that the donating *nursing home* has complied with the provisions of these rules; ()

v. Certifies that the patient's name, prescription number, and any other identifying marks have been removed or redacted from the package by the donating *nursing home*; ()

vi. Lists the name of the donating *nursing home* and the name of the receiving *qualifying* charitable clinic or center; and ()

vii. Lists the name, strength, expiration date, lot number, and quantity of each prescription drug to be donated. ()

d. A copy of the manifest must be delivered to the *qualifying* charitable clinic or center with the donated drugs. ()

03. Receipt of Donated Drugs. *Donated drugs may be received at a qualifying charitable clinic or center by a pharmacist, physician, physician assistant, advanced practice professional nurse with prescriptive authority, dentist, optometrist, or authorized clinic personnel.* ()

04. Verification of Received Drugs. ()

a. Receipt of each donated drug must be verified against each manifest by a *pharmacist, physician, physician assistant, advanced practice professional nurse with prescriptive authority, dentist, optometrist, or authorized clinic personnel.* ()

b. In the event that the identifying patient information is not removed by the donating entity, the information must be removed or redacted at the charitable clinic or center. ()

c. Before donated drugs are placed with a qualified charitable clinic or center's regular stock, a licensed pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority must: ()

i. Verify utilizing a current drug identification book, a computer program, or an online service for the same that the donated drugs meet the criteria in Subsection 380.01 of these rules; ()

ii. Verify that the name and strength noted on the label of each unit of the donated drug is correct; and ()

iii. Determine that the donated drugs are not adulterated or misbranded and that they are safe to ()

dispense. ()

d. Improperly donated drugs that do not meet criteria in Subsections 380.01 through 380.03 of these rules must be destroyed, and documentation of such destruction must be maintained within a destruction record. ()

05. Storage of Donated Drugs. ()

a. Drug storage must have proper environmental controls to assure the integrity of the drug in accordance with the drug manufacturer's recommendations and United States Pharmacopoeia standards. ()

b. Donated drugs may be commingled with the qualifying charitable clinic or center's regular stock of drugs only if the packaging on the donated drugs has been labeled to show that the drugs were obtained through a nursing home. ()

c. Donated drugs with packaging that has not been labeled to show that the drugs were obtained through a nursing home must be kept in an area that is separately designated from the qualifying charitable clinic or center's regular stock of drugs. ()

d. The space in which drugs are stored must be secured at all times and accessible only to pharmacists, physicians, physician assistants, dentists, optometrists, advanced practice professional nurses with prescriptive authority, and authorized clinic personnel. ()

06. Dispensing Donated Drugs to Medically Indigent Patients. ()

a. Donated drugs that are expired, adulterated, misbranded, recalled, deteriorated, or not kept under proper conditions must not be re-dispensed to indigent patients and must be destroyed. Documentation of such destruction must be maintained within a destruction record. ()

b. A licensed pharmacist, physician, physician assistant, dentist, optometrist, or an advanced practice professional nurse with prescriptive authority working at a qualifying charitable clinic or center who re-dispenses donated drugs to any patient must: ()

i. Utilize a proper and appropriate container; ()

ii. Place a label on the container that conforms to provisions of these rules; and ()

iii. Initial the prescription label. ()

c. The re-dispensed drug must be assigned the same expiration date as is on the original package. ()

d. A charitable clinic or center must maintain dispensing records for each donated drug dispensed. ()

e. Licensed pharmacists, physicians, physician assistants, dentists, optometrists, and advanced practice professional nurses with prescriptive authority dispensing donated drugs are required to provide patient counseling. ()

07. Miscellaneous. ()

a. Authorized clinic personnel means an individual who is: ()

i. Under the general supervision of a licensed pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority; and ()

ii. Named in writing by the qualifying charitable clinic or center's medical director or consultant

pharmacist. ()

b. The qualifying charitable clinic or center must maintain a list of the names of authorized clinic personnel, their individual duties, and a summary of their qualifications. ()

c. Physician assistant has the same definition as in Section 54-1803, Idaho Code. ()

d. Qualifying charitable clinics or centers receiving donated drugs must develop policies and procedures to assure that authorized clinic personnel will comply with applicable federal, state, and local laws. ()

e. Drugs donated under these rules must not be sold, resold, offered for sale, traded, or transferred to another charitable clinic or center. ()

f. Nothing in these rules precludes a qualifying charitable clinic or center from charging an indigent patient a dispensing fee. ()

08. Record Keeping Requirements. ()

a. Donating nursing homes must maintain all manifests in a readily retrievable fashion for at least two (2) years. ()

b. Qualifying charitable clinics or centers must maintain destruction records, dispensing records, and manifests in a readily retrievable fashion for at least two (2) years. ()

381. -- 400. (RESERVED).

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.02 - SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1001

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 Sections 63-105, 63-3039, and 63-3624, Idaho Code.

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

THURSDAY, FEBRUARY 18, 2010 - 9:00 a.m.

**IDAHO STATE TAX COMMISSION
800 Park Blvd. Plaza IV, Boise, ID 83712
1st Floor, Conference Room 5**

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

Participants may provide oral presentations and/or submit written comments that identify the participant's specific problems with the rule and recommended solutions.

Participants wishing to attend the meeting should contact Shelley Sheridan (208) 334-7544.

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:

Sales Tax Rule 013 states that sales tax does not apply to the use of natural materials secured on site and used without significant change. The Commission is considering changing the rule to allow certain natural rock (including crushed rock) to be used without incurring a sales tax liability.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking contact Jim Husted (208) 334-7544.

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 the date of the hearing. Submission of suggested draft language is encouraged.

DATED this 28th day of December, 2009.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

Sections Affected Index

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - Rules of the Idaho State Board of Pharmacy

Docket No. ***27-0101-0904***

366. -- 379. (Reserved).....	17
380. Legend Drug Donation – Standards And Procedures.	17
381. -- 400. (Reserved).....	20

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

There are no proposed rules being promulgated or published in this month's Bulletin.

Please refer to the Idaho Administrative Bulletin, [February 3, 2010, Volume 10-2](#), for all rulemaking notices and for the text of temporary, proposed and final rules, public hearings and negotiated rulemaking meeting schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code, or for information on purchasing the Bulletin and other rules publications, visit our website at adm.idaho.gov/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of the Administrative Rules Coordinator, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK,
YOU MUST BE CONNECTED TO THE INTERNET**

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

Subject Index

D

Dispensing Donated Drugs to Medically
Indigent Patients 19
Donation Standards 17
Drug Donation Criteria 17

L

Legend Drug Donation 17

M

Miscellaneous 19

R

Receipt of Donated Drugs 18
Record Keeping Requirements 20

S

Storage of Donated Drugs 19

V

Verification of Received Drugs 18