

# ADMINISTRATIVE LAW OVERVIEW

## I. ADMINISTRATIVE LAW

### A. Separation of Powers

The Idaho Constitution provides separate and distinct functions for the executive, judicial, and legislative branches of government. Basically, the legislative branch is responsible for developing uniform laws from which society must operate. The executive branch is charged with enforcing the laws the Legislature passes. The judicial branch interprets both legislative law and executive branch action. Each branch is provided with certain powers to fulfill respective roles. These powers are either granted by the Legislature through statute or are bestowed by the Constitution.

Executive branch powers are similar in certain ways to those of the legislative and judicial branches. Administrative agencies, which make up the largest part of the executive branch, execute duties often imposed by and reminiscent of the other two branches. The study of administrative agency duties and powers, limitations of these powers as imposed by the Constitution and other branches, and laws made under these powers, is known as administrative law.

### B. The "Legislative" Powers of an Administrative Agency

Administrative law commonly begins when a bill enacted by the Legislature becomes law. These laws, known as statutes, usually contain:

1. A program the Legislature wants accomplished;
2. The executive branch agency it designates to carry out the program; and
3. Guidelines for implementation.

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. Since the Constitution requires the law to be applied equally, rules are necessary to ensure administrators do not act arbitrarily when interpreting the statute and implementing the program.

The Legislature may specifically mandate rules or it may indirectly require them by authorizing a function that it has elsewhere stated necessitates rules (i.e., the department shall have a plan developed in accordance with the Administrative Procedure Act).

Rulemaking then, is the executive branch's legislative authority to make law. However, rulemaking is "legislative" only in a very special, restricted sense because agencies do not originate the state's policy. Rules merely implement the state's policy. Agency law-making is more limited than the Legislature's because a rule is dependent on the statute it implements.

Rulemaking is also an inherent power of executive branch agencies or a power based on the governor's constitutional obligation to execute the law. For example, if the Legislature granted no specific authority for an agency to make rules, would the agency then arbitrarily enforce the law without them? Because rulemaking is a procedure designed essentially to protect the public interest, it is unlikely the courts would forbid rules in the absence of their direct authorization by the Legislature. Also, before an implied rulemaking authority is assumed, the rule writer should obtain legal verification of such right.

### C. Judicial Powers of an Administrative Agency

The agency uses a rule, developed in conjunction with specific statutory authority, to carry out the intent of

law. Since these rules affect the rights of individuals, such as the manner in which a person may make a living, agencies may be subject to scrutiny or review by a court of law. Through administrative hearings, an agency may also adjudicate certain issues arising because of the statutes or rules the agency administers. An agency's authority to conduct these hearings and make findings of fact and conclusions of law which affect an individual's rights is recognized as its judicial authority.

The procedures for administrative hearings are specified in the Idaho Administrative Procedure Act and within the various agencies' rules. In most cases, the administrative hearing decisions are subject to review by the courts. Therefore, an agency's judicial powers are far more limited than those of the courts.

## **II. ADMINISTRATIVE AGENCIES**

Administrative agencies are subdivisions of the executive branch, referred to as departments, divisions, agencies, offices, bureaus, and commissions, that have been given the responsibility to maintain and operate all executive government functions. The Legislature created administrative agencies for several reasons.

First, agencies handle the daily operations of government. Although the Constitution charges the governor with the enforcement of the law, enforcing the law requires close scrutiny on a continual basis. Therefore, both the Legislature, which is a part-time and meets for only a few months of the year in Idaho, and governor rely on administrative agencies to assist in carrying out day-to-day enforcement activities.

Second, agencies provide needed technical expertise. Government has a general obligation to protect the health, safety and welfare of the public. Providing this protection involves special skills. Assistance to the needy, pollution control, communications, and transportation are just a few of the areas that government regulates. Successful administration of such a wide range of issues demands the ability of personnel who have had solid background of experience and training. Public employees provide necessary expertise to regulate these areas.

Agencies also meet the requirement for flexibility to deal with emergency situations quickly. Since the Legislature cannot be in session during every crisis, it delegates the authority to agencies in order to meet emergency needs as the occasions arise.

Finally, agencies provide continuity and stability to government. Most elected officials who hold legislative and gubernatorial offices change regularly. Administrative agencies provide the necessary link to the missing continuity caused by legislative and gubernatorial turnover. The general public needs to interact with government on a daily basis and must be able to rely on consistency in the operating procedures and decisions made by an agency.

## **III. AUTHORITY OF AN ADMINISTRATIVE AGENCY**

### **A. Statutory**

Administrative agencies are usually created by statute. A constitutional provision or executive order may also create an agency. Statutes establish most of the powers and functions of administrative agencies. The powers of an agency may be explicitly or broadly defined depending on the amount of discretion an agency needs to carry out its mandate.

### **B. Rulemaking**

Agency rulemaking grants no authority not already conferred by statute or the Constitution. Rules, however, interpret and refine agency authority by specifying the functions, standards, and procedures of

the public employees carrying out the Legislature's program. As extensions of the statutes they implement, rules govern what the public may or may not do in a manner consistent with the statute's purpose.

### **C. Executive Orders**

The governor directs the policy of the executive branch and may issue specific executive orders embodying that policy. Executive policy, however, is itself derived from statutory or constitutional authority. Agencies implement the governor's policy through internal policies and procedures, or through rules, but may not exceed what the Legislature has authorized.

### **D. Discretion**

Depending on the kind of issues involved, an administrative agency may often need extensive flexibility to provide efficient and expert decision-making. However, flexibility must have limits in order to prevent arbitrariness and potential abuse of power. Determining what the limits should be is the fundamental issue underlying the evolution of administrative law. Legal checks must be available to provide flexibility yet prevent abuse of an administrative agency's discretion. A significant purpose of administrative rules is to define the limits of agency employees' discretion.

## **IV. LEGISLATIVE (LAW MAKING) POWER OF AN ADMINISTRATIVE AGENCY**

Rulemaking is the law-making power of an administrative agency. It is a process governed at the state level by statutes that establish the agency and grant it authority, as well as a statute (i.e. the Idaho Administrative Procedure Act) which defines rulemaking generally. An administrator who makes rules is a lawmaker, not unlike a legislator, but with more limited authority. Unlike judicial hearing procedures, rulemaking does not strictly involve due process rights since no one has a right to see that a certain policy is enacted.

However, the legislative and judicial aspects of an administrative agency often overlap and it is sometimes difficult to distinguish between them. It is helpful to classify an agency's actions in certain ways. When it is acting more like a legislature than a court, an agency is taking quasi-legislative action. Rules made under such authority are general in scope. They are made to apply to all persons in a class and not to particular parties or single individuals.

Agency adjudicatory decisions affect only the parties involved in the particular action. Although, some decisions set precedents applicable in later cases and may require a rule to be made that will apply generally.

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. A pyramid is comprised of various levels of stone. Each increasing level becomes smaller in size, yet greater in scope, terminating with the capstone.

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.

Each agency is granted authority over a limited area of government and can only make rules ("legislate") regulating that area. If an agency takes an action in excess of the authority delegated to it by the Legislature or the Constitution, it is unlawful. Rules promulgated outside the scope of authority of an agency are voidable. In addition, courts have overturned rules that are arbitrary, capricious, an abuse of discretion, illegally enacted, or otherwise not in accordance with the law. This means that each rule must have some reasonable basis grounded in the language and intent of the statute or Constitution and should be related to the purposes the administrator intends to accomplish.

# ADMINISTRATIVE RULES OF THE STATE OF IDAHO

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

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

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

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

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

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

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

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

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

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

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

# THE ADMINISTRATIVE PROCEDURE ACT

## Title 67, Chapter 52, Idaho Code Sections 67-5201 through 67-5292

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The APA is organized into five subject matter areas: Definitions, Rulemaking, Contested Cases, Judicial Review, and Legislative Review of rules.

**a. Definitions - Introductory Provisions:**

**I.C. Sections 67-5201 through 67-5207**

These sections create the Office of the Administrative Rules Coordinator and two official rules publications: the Idaho Administrative Bulletin and the Idaho Administrative Code. It provides for rule promulgation by the Rules Coordinator to implement the provisions of Sections 67-5203, 67-5204 and 67-5205 and by the Attorney General to implement the provisions of Sections 67-5220 through 67-5232 and 67-5240 through 67-5255. These sections also set fees for rule promulgation, provide the distribution of free copies of the Code and Bulletin to public repositories and creates the Administrative Code fund.

**b. Rulemaking:**

**I.C. Sections 67-5220 through 67-5232**

These sections provide the framework for agency rule promulgation.

**c. Contested Cases:**

**I.C. Sections 67-5240 through 67-5255.**

Provisions for agency administrative hearings. Four distinct orders may result from a contested case hearing: recommended, preliminary, final, and emergency.

**d. Judicial Review:**

**I.C. Sections 67-5240 through 67-5255**

Rules, contested cases, and the agency's performance or failure to perform any duty placed on it by law, are subject to judicial review.

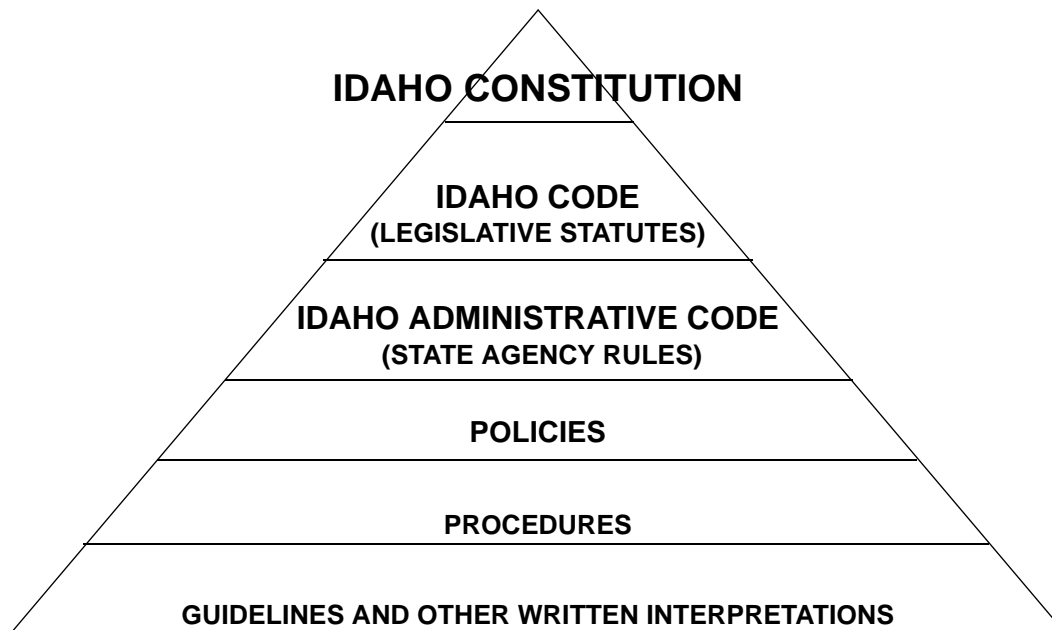
The standard that the court applies depends on the nature of the proceeding.

**e. Legislative Review of Rules:**

**I. C. Sections 67-5291 through 67-5292**

These sections provide for legislative review (approval, rejection, modification, or amendment) of all agency rules; and automatic expiration annually of ALL agency rules on July 1 of each year unless extended by statute each year.

# 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, boards and commissions. Rulemaking is the law-making 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:** A mission statement or other 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.

# NEGOTIATED RULEMAKING

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## **What is Negotiated Rulemaking?**

Negotiated rulemaking is a process in which all interested and affected parties and the agency seek a consensus on the content of a rule. The process is generally informal and flexible and allows agencies to conduct negotiations in a manner that is most effective for the agency and those affected by its rules.

The Administrative Procedure Act promotes the use of negotiated rulemaking by agencies whenever it is feasible to do so. An agency may publish a “Notice of Intent to Promulgate a Rule” in the Administrative Bulletin to announce its intent to conduct negotiated rulemaking. If the agency determines that negotiated rulemaking is not feasible, the reason(s) for such determination is stated in the notice of proposed rulemaking once regular rulemaking procedures are initiated. The need to adopt a temporary rule, the simple nature of the changes being made to the rule, the lack of identifiable representatives of affected interests, or the determination that affected interests are not likely to reach a consensus are all circumstances that make it infeasible to conduct negotiated rulemaking.

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

## **Publishing a Notice of Intent to Promulgate a Rule**

If an agency decides to enter into the negotiated rulemaking process by publishing a notice in the Bulletin, the “Notice of Intent to Promulgate a Rule” must contain specific information. The notice must state the dates, times, and locations of any scheduled meetings, describe the principal issues involved and, identify those parties whose interests are likely to be significantly affected by the rule. The notice must also explain how a person may participate in the rulemaking and how copies of any preliminary drafts may be obtained, and it must provide agency contact information.

The Administrative Procedure Act (Section 67-5220, I.C.) allows for an 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*



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*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 draft document being discussed is usually made available or provided to the participants prior to the meeting. This is most easily accomplished by providing a link to the draft document on the agency's web site or by using some other mass distribution method such as email.

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

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

### **What are the Advantages to Negotiated Rulemaking?**

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

# PROPOSED RULE

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## What is a Proposed Rule?

A formal, written proposal by the agency to adopt a new administrative rule or amend or repeal an existing rule in accordance with the Administrative Procedure Act is called a proposed rule. Prior to being codified into the Administrative Code as a final, enforceable rule, an administrative rule must publish in the Administrative Bulletin as a proposed rule. This is the first required step in the process of formal rulemaking. This legal process has several strict procedural requirements that must be followed in order for the rule to become legally enforceable. The following is an excerpt from the Administrative Procedure Act that outlines what must take place once an agency initiates regular rulemaking procedures and submits a notice of proposed rulemaking for publication in the Administrative Bulletin.

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

- (1) *Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:*
  - (a) *The specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
  - (b) *A statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
  - (c) *A specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule;*
  - (d) *The text of the proposed rule prepared in legislative format;*
  - (e) *The location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
  - (f) *The manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
  - (g) *The manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and*
  - (h) *The deadline for public (written) comments on the proposed rule.*

## The PARF (Proposed/Temporary Administrative Rules Form)

Prior to initiating regular rulemaking proceedings (proposed rulemaking) or before adopting a

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

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

### **Filing a Proposed Rulemaking for Publication in the Bulletin**

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

### **Filing a Proposed Rulemaking that Imposes a Fee or Charge**

All proposed rulemakings that are submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of LSO who then forwards it to the appropriate germane joint subcommittee reviewing the promulgating agency's proposed rules.

### **Incorporation by Reference - Proposed Rulemaking Notice**

**Pursuant to Section 67-5229(2), Idaho Code**, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a website or post this information on its own website, or both. This link can be placed into the rule and activated once it is posted on the Coordinator's website. The agency is responsible for maintaining the links and making sure the web links are correct and active. Corrections and updates to these links that are in rule may be made outside of regular rulemaking proceedings.

### **Newspaper Legal Notice**

Coinciding with the publication of proposed rules in the Bulletin, the Rules Coordinator publishes a legal notice in the newspaper with the largest paid circulation in each county of the state. The legal notice is a declaration of an agency's intent to propose a new rule or to amend or repeal an existing rule. The legal notice must contain a brief description of the subject matter of the proposed rulemaking, the name and address of the agency proposing the rulemaking, the rule docket number, title of the chapter, and the written comment submission deadline date. This legal notice also alerts the

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reader to any public hearings that may be scheduled on any rulemakings, extensions to the deadlines for submitting written comments, and where copies of the Bulletin are available and how they may be obtained. ***While the newspaper legal notice is required to provide notice of proposed rulemakings only***, it also identifies any temporary rules that have been adopted and provides information on any scheduled public hearings and negotiated rulemaking meetings that are being held. It does not address pending or final rules, executive orders of the Governor or other documents that may also appear in the same Bulletin. Because the legal notice is required to give notice of all proposed rulemakings, the legal notice is not published if there are no proposed rulemakings being published in the Bulletin.

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

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

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

### **Vacating A Proposed Rulemaking**

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

### **Moratorium on Proposed Rulemaking**

Prior to the beginning of the legislative session a moratorium is imposed on proposed rulemaking. This moratorium begins in mid November and is in effect until the adjournment of the legislature session. The analysts at the Legislative Services Office who review and prepare an analysis of the proposed rules for the germane joint subcommittees stop reviewing proposed rules and begin drafting legislation for the upcoming session at this time. The various germane joint subcommittees that review the prepared analyses and the proposed rules do not meet during the legislative session. For these reasons, the Rules Coordinator’s Office will not accept proposed rulemaking filings from agencies during the legislative session. Because the germane joint subcommittees’ review of all proposed rulemakings is a procedural requirement of the APA, the Rules Coordinator’s Office cannot publish a proposed rulemaking unless the required analysis and review have been completed.

Please note that ***the moratorium affects only proposed rulemakings*** and does not affect the publication of notices of intent to promulgate (negotiated rulemaking), or temporary or pending rules. Any of these may be submitted for publication in the Bulletin during the moratorium and the legislative session.

# TEMPORARY RULE

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## What is a Temporary Rule?

A temporary rule is a rule authorized by the Governor to become effective before it has been submitted to the legislature for review and which expires under its own terms or by operation of law. A temporary rule can be made immediately effective and enforceable upon its adoption by the agency without legislative approval. If not made immediately effective, it becomes effective and enforceable on the date specified in the rulemaking notice that is published in the Administrative Bulletin. However, a temporary rule can *only* be adopted and made enforceable if it meets certain criteria outlined in the APA and, as stated, is authorized 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 these three findings. The Governor’s Office determines whether or not the temporary rule is justified based on the information supplied on the Proposed Administrative Rules Form (PARF). The PARF must be submitted for approval prior to filing a temporary rulemaking for publication even if the rulemaking is not a proposed rule. Temporary rules are not subject to Section 67-5222, Idaho Code, that allows for public participation in the rulemaking. Unlike a proposed rule, the agency **is not required** to accept requests for public hearings or written comments regarding the temporary rule nor is temporary rule subject to legislative review prior to its adoption and enforcement by the agency.

### Publication of a Temporary Rule in the Bulletin

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

### A Temporary Rule Imposing a Fee or Charge

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

### How Long is a Temporary Rule Effective?

Temporary rules that are *adopted* (not published but adopted) by an agency **BEFORE** the beginning of a legislative session are subject to legislative review. All temporary rules must be

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

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

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

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

**Temporary and Proposed Rulemaking - Concurrent Rulemaking and Bulletin Publication**

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

**Rescission of a Temporary Rule**

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

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

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

# PENDING RULE

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## What is a Pending Rule?

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

## When Does a Pending Rule Become a Final Rule?

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

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

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

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

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

## Publication of a Notice of Rulemaking - Adoption of Pending Rule

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

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

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- (f) *a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.*

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

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

#### **When Fees or Charges Are Imposed.**

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

#### **Making Corrections to Codified Rules.**

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

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

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

#### **Correcting a Pending Rule Prior to Legislative Review**

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



# FINAL RULE

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## **What is a Final Rule?**

Idaho Code Section 67-5201(9) defines a “final rule” as a rule that has been adopted by an agency under the regular rulemaking process and is in effect. Final rules are sometimes referred to as “permanent” rules and these rules mainly comprise the Administrative Code. All final rules published in the Administrative Code have all been promulgated in accordance with the rulemaking provisions of the Idaho APA. Once a rule is final it remains in effect as a final rule unless repealed or replaced by another final rule that has gone through the rule promulgation process. All rules (final and temporary) expire on July 1st of each year and must be statutorily authorized to continue in full force and effect until July 1st of the following year.

As stated, a rule is not valid and enforceable (final) unless it has been promulgated in accordance with the regular rulemaking requirements of the APA. This means that a rule that is going through the rulemaking process cannot become a final rule until it has been submitted for review for final approval by the Idaho legislature. This review is done by the standing committees of the legislature each session. Any final rule in the Administrative Code is subject to legislative review and may be brought before a standing committee of the legislature during a regular or special legislative session. Pursuant to Section 67-5291, Idaho Code, any final rule found to be inconsistent with legislative intent may be rejected by concurrent resolution of the legislature.

## **From Pending Rule to 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. If a final effective date is provided in the pending rule that precedes the adjournment date of the legislative session, once the rule is final and effective it may be applied retroactively. However, as previously stated, the retroactive application of the effective date cannot take place until after the legislative session has concluded. So even though the rule may technically already be in effect upon the conclusion of the legislative session, it is not enforceable until after the legislative session at which the rule was approved. The exception to this are those rules that have been approved by or otherwise acted on by concurrent resolution. In those cases the final effective date of the rule is the final adoption date of the concurrent resolution.

Unless the standing committee reviewing the pending rule finds a reason not to approve the rule, the rule becomes final at the conclusion of the legislative session or on such other date as specified in the rule.

Where the legislature finds that a pending rule is inconsistent with the legislative intent of the statute under which the rule was made, a concurrent resolution is adopted to reject the entire pending rulemaking or those parts expressly specified in the concurrent resolution.

A ‘Notice of Rulemaking - Final Rule’ is required to be published in the Bulletin when a rulemaking is partially rejected by concurrent resolution. Because the pending rule was changed,

the changes made to the rule must be published in the Bulletin. It is the responsibility of the agency to publish a 'Notice of Rulemaking - Final Rule' reflecting the action taken by the Legislature and the effective date of that action. In some cases, another rulemaking may be required to conform to the provisions of the concurrent resolution.

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

# RULE NUMBERING AND DOCKETING

## HOW TO USE THE IDAHO ADMINISTRATIVE CODE AND BULLETIN

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

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

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

### **IDAPA 38.05.01.045.02.b.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, **05** identifies the Department of Administration’s Division of Purchasing.

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

“**045**” refers to major Section **045**, “Sole Source Purchases.”

“**02**” refers to the first level subdivision (numeric) Subsection 045.**02**.

“**b**” refers to the second level subdivision (alpha) Paragraph 045.02.**b**.

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

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## 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 “-” (38-0501-1101). 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. 38-0501-1101”***

**“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”.

**“-1101”** the “11” denotes the calendar year or, in this example, 2011. 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 2010 and is submitted to OAR in November 2010 for publication in January 2011 will be assigned a docket number using “11” to denote the publication date, not “10” when the rulemaking was started by the agency.

**“-1101”** 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 2011. Any subsequent rulemakings done on this same chapter that publish in 2011 will be numbered sequentially and indicate the actual number of rulemakings being done on this chapter: i.e. “-1102,” “-1103,” 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)”***

# INCORPORATION BY REFERENCE

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## What Is Incorporation By Reference?

Often times statutorily-authorized state government programs are also subject to additional authority or mandates that come from outside of state government. It is not uncommon for a state agency to administer and implement a federally mandated program, for instance, as part of its normal duties. In order to implement a program that fully complies with all governing statutory or regulatory requirements, these additional provisions must also be implemented and enforced by the agency through its administrative rules. Some programs may require that the agency rule include a uniform standard, code, or regulation from an entity that may or may not be part of state government. The legal process for bringing these additional external materials into and making them part of a state agency rule is known as “incorporation by reference.”

Generally, it can be unweildy and very costly to republish all or part of the text of the incorporated material in an agency rule. It can also be very inconvenient. For these reasons **Section 67-5229, Idaho Code**, permits an agency to incorporate by reference certain materials WITHOUT the republication of the text of these materials in the rule. As stated in statute, whenever the republication of the text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency may adopt these materials into the rule and make them part of the rule through the incorporation by reference provision.

## What Can Be Incorporated by Reference?

The APA is very specific as to what may be incorporated by reference into a state agency rule. Section 67-5229(1) states that all or part of the following materials may be incorporated by reference:

- (1) *A code, standard or rule adopted by an agency of the United States;*
- (2) *A code, standard or rule adopted by any nationally recognized organization or association;*
- (3) *A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or*
- (4) *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.*

As part of the rulemaking, the agency must:

- (1) *Include in the notice of proposed rulemaking a brief written synopsis of why the incorporation is needed; and*
- (2) *Note where an electronic copy can be obtained or provide an electronic link to the incorporated materials that at a minimum will be posted on the agency's website or included in the rule that is published in the administrative code on the website of the office of the administrative rules coordinator; and*

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- (3) *If otherwise unavailable, note where copyrighted or other proprietary materials can be viewed or purchased.*

An example of a code or standard that is adopted by state law or statutorily authorized by Idaho statute to be adopted by rule are the high school graduation standards of the State Board of Education. These standards are incorporated by reference into the Board's rules. Once incorporated by reference, these, and similar codes or standards, are subject to legislative review for approval. When changes are made to these standards, they are submitted to the legislature for final approval. The changes may be rejected in whole or in part by concurrent resolution and declared null, void and of no force and effect.

Many incorporated documents are not subject to this type of legislative veto. As an example, the Idaho legislature cannot reject regulations from the Code of Federal Regulations that have been incorporated by reference into state rule. The supremacy clause allows federal law to override state law and thereby prohibits the state from rejecting its regulations in this instance. Likewise, the state legislature cannot veto provisions of the International Fire Code that are incorporated by reference because of the nationally recognized authority of the codifying entity.

### **How Do I Incorporate a Document by Reference?**

Formal rulemaking procedures must be followed in order to incorporate materials by reference into a rule. When incorporating by reference, the rule writer must understand that the materials being incorporated must be maintained in their original incorporated state. The APA requires all documents that are incorporated by reference to be date and edition specific and prohibits the incorporation of future materials. The following, for example, is not a legal incorporation by reference: *"...this rule incorporates the 2009 edition of the Uniform Commercial Code **and all future editions, as amended.**"* The courts have invalidated prospective incorporations by reference for this reason. This disallows any open-ended incorporation statements that do not refer to a specific edition or source. And, if an agency subsequently wishes to incorporate amendments to previously incorporated material, it must again go through regular rulemaking procedures to do so.

Specific parts of a code, standard or regulation may be incorporated while exempting the rule from others provisions of the same code, standard or regulation that the agency does not want included as part of the incorporation by reference. Whenever a document is incorporated by reference, the rule must provide specific information regarding the document including *the name, edition or version number, and the date on which the rule, standard or code was published, approved or became effective.* This is important to note because an improper incorporation can be challenged and possibly invalidated.

### **Notice of Proposed Rulemaking**

When incorporating materials by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can accessed on a website or it must post this information on its own website, or both. An active link can be placed into the rule itself and posted on the Coordinator's website once the rule is enforceable. The agency is

responsible for maintaining the links and making sure they are correct and active. If a link in the rule must be corrected or updated links at some later date, the Rules Coordinator can make these corrections thout the need of going through regular rulemaking proceedings.

If the materials have copyright protection or are otherwise unavailable, the rule must indicate where a copy can be viewed or purchased. If not otherwise avaiable, a copy of the incorporated material must be kept at the agency's central office. It in no longer necessary to provide a copy of the incorporated material to the Idaho Supreme Court Law Library or the State Library.

### **Required Section in Rule**

The Rules of the Administrative Rules Coordinator require that agencies include a section in each rule that indicates whether or not any documents have been incorporated by reference. The incorporated material must be indentified with specificity and must include the date when the code, standard, or rule was published, approved, or became effective and how a copy of the document may be obtained. The following is an example of how a properly promulgated rule would appear in the Code using the incorporation by reference provision:

#### **004. INCORPORATION BY REFERENCE.**

**01. Incorporated Document.** IDAPA 44.01.01 adopts and incorporates by reference the full text of the "Standards for Grammar, Style, Numbering and Structure, 8th Edition, January 2010," Sections 12 through 450, only, published by the National Association of Administrative Codes and Registers. (7-1-10)

**02. Electronic Access.** The "2010 Standards for Grammar, Style, Numbering and Structure, 8th Edition," may be viewed on line at the following web address: [www.naacr.org/ACR/index/standard.htm](http://www.naacr.org/ACR/index/standard.htm) (7-1-10)

**03. Printed Copies.** Bound copies are available for purchase by contacting NAACR, 1400 Pennsylvania Ave, Washington, D.C. 90016-1400. (7-1-10)

### **Additional Information**

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

# PUBLIC PARTICIPATION IN RULEMAKING

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As Idaho citizens our access to the rulemaking process is protected by the Idaho Administrative Procedure Act (APA), Title 67, Chapter 52, Idaho Code. The APA was enacted to ensure that the public is made aware of and can participate in the rulemaking activities of state agencies. Public participation in the rulemaking process is guaranteed by the requirement that agencies accept written comments and requests for public hearings from the public once an agency initiates a formal rulemaking and publishes a proposed rule. The law also allows the public to petition an agency to change or repeal an existing rule or adopt a new administrative rule. All such requests, comments, and petitions must be submitted in accordance with the criteria specified in the APA and as outlined in the rulemaking notices (proposed and negotiated rulemaking) published in the Bulletin. The Act also addresses an agency's responsibilities in dealing with such requests and outlines the required actions the agency must take to comply with the law.

## 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, the Administrative Procedure Act requires an agency promulgating proposed rules to ***provide a comment period of not less than twenty-one (21) days after the publication of those proposed rules***. 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 twenty-one day comment period is the minimum number of days allowed. The comment period may exceed twenty-one days, but cannot be less than twenty-one days.

The deadline date of the comment period must be included in the notice of proposed rulemaking, and the mailing address and name of the contact person to whom comments must be submitted.

Prior to the adoption of the pending rule, all written comments submitted before the deadline **must be considered** by the agency. However, consideration of a written comment **does not** mean that the comment will necessarily cause further amendment to the proposed rule or be incorporated into the text of the pending rule.

Any changes made to the proposed rule after the comment period has expired must be a logical outgrowth of the proposed rule and should result from the consideration of the comments received. An agency may comment to its own rulemaking and substantive changes based on those comments can be made by the agency. If technical errors are found in the rule docket, a comment must be made by the agency and included in the rulemaking record.

It is important to note that all written comments submitted must included in the rulemaking record. The rulemaking record must be kept on file with the agency and made available for public inspection. Written comments may be submitted at a public hearing and carry as much weight as a verbal comment at the hearing.

The agency is not required to respond to anyone who submits a written comment or acknowledge that the comment has been received and considered by the agency, however, it is a good policy to have a process in place to make such acknowledgements.



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## 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.*

The APA does not require that an agency schedule a public hearing when promulgating proposed rules. It must simply provide the opportunity to request a hearing of the agency. This opportunity is provided in the notice of proposed rulemaking.

If it is unlikely that there will be any comment or controversy resulting from the rule changes or if the rulemaking is being done to comply with one of the criteria listed above, it is not necessary to schedule a public hearing. If meeting one of the criteria in (a) or (b), it should be explained in the rulemaking notice that this is the reason that no hearings will be held and that any requests for hearings will be denied. However, when rule changes are being promulgated that do not meet the exceptions listed above that may result in comment or controversy or when deadlines for completing the rulemaking are looming, it may be prudent on the part of the agency to schedule public hearings to avoid unwanted delays in the rulemaking process.

Agencies are required to allow a minimum of fourteen days for a request for public hearings (oral presentations). This period ends fourteen days after the publication date of the Bulletin or fourteen days before the end of the written comment submission deadline, whichever is the later date. The notice of proposed rulemaking must include the deadline date for requesting a hearing and provide instruction on how a request may be made to the agency.

An agency cannot conduct a public hearing unless proper notice has been given which means that the date, time, and location of the hearing must be published in the Idaho Administrative Bulletin.

If the agency decides that a hearing(s) is necessary and the proposed rulemaking notice has already published in the Bulletin without a scheduled hearing, a separate "Notice of Public Hearing" must be submitted for publication prior to the hearing being held. The Rules Coordinator does not provide any additional notification regarding public hearings other than that given in the Bulletin or, when possible, in the listing in the newspaper legal notice. If additional public notice is necessary beyond what is provided for in the APA, it is the agency's right and responsibility to take whatever steps necessary to ensure that adequate notice is given to the public. There are no set criteria on how an agency may advertise these public hearings.

When conducting a public hearing, a staff member from the agency may facilitate the hearing or the agency may hire (and pay) a hearing officer to do so. The hearings should be taped or a court reporter hired to transcribe the hearing. The transcripts and other information gathered at the public hearing become part of the rulemaking record for that docket.

A public hearing is a forum for the public to make oral presentations to the agency based on the rulemaking. This is not a debate of the issues involved in the rulemaking. Initiating a dialogue with the public is not the purpose for the hearing; rather it is a time reserved for the public to comment orally on the rule. Written comments submitted at a hearing carry the same weight as oral commentary.

# THE RULEMAKING RECORD

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

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

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

***The rulemaking record must be maintained and made available for inspection by the public 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 the Administrative Rules Coordinator maintains both electronic and hard copy files of all rulemaking documents submitted for publication. However, the Rules Coordinator does not receive copies of submitted comments or hearing information and does not keep records of these. This information is the responsibility of each agency and must be part of the rulemaking record.

# AGENCY RESPONSIBILITIES IN RULEMAKING

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## PETITION FOR ADOPTION OF RULES

The Idaho Administrative Procedure Act allows for any person to petition an agency requesting the adoption, amendment, or repeal of a rule. In accordance with 67-5230(1), Idaho Code, 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, or in those cases where a board or commission adopts rules, 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.

The APA and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General" require substantial compliance with the legal requirements when petitioning an agency to initiate rulemaking. Section 04.11.01.821 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.*

## UNIFORM INDEXING SYSTEM FOR AGENCY ORDERS

With the reenactment of the APA in 1992, the rules coordinator was mandated to establish a uniform indexing system for agency orders. Pursuant to Section 67-5206(1)(d), Idaho Code, the indexing code and requirements for maintaining the index are provided for in IDAPA 44.01.01.800.

# LEGAL NOTICES - NEWSPAPER PUBLICATION

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The Administrative Rules Coordinator is required to publish a newspaper legal notice that provides very specific information relating to all *proposed rulemakings* that are being published in the coinciding issue of the Administrative 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, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin.*

This section of the APA also stipulates the format and content requirements of the legal notice. Specifically, the legal notice must include the promulgating agency's name and address, the rule docket number, a subject matter description of the rule being promulgated, and the written comment submission deadline date. Lastly, a statement that informs citizens that the Administrative Bulletin may be viewed electronically online is printed in prominent bold typeface at the bottom of the notice.

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 is currently printed in 38 newspapers throughout Idaho.

Although not a requirement of the APA, the legal notice also identifies those rule dockets that have public hearings already scheduled and lists the agency and docket numbers of notices of negotiated rulemaking being published in the Bulletin. The legal notice, however, **does not** provide any details about hearings or meetings or other processes or procedures related to rulemaking. It simply directs the reader to that issue of the Bulletin where that information is published. Additionally, the legal notice also lists any temporary rules that have been adopted and published in the Bulletin.

Some federal laws and programs that are enforced and administered through state agency rules may require more public notice when a rulemaking is being done than is required by the Idaho APA. If additional notice is required, it is the agency's responsibility to provide any additional notification needed to satisfy the federal requirement. The Rules Coordinator's Office will assist the agency, if requested, in providing additional notification, whether that be through the Bulletin or in area newspapers.

Section 60-105, Idaho Code, limits the fees charged by newspapers to a state agency for legal notice publications. There is no additional cost to the agency for the legal notice publication as this is included in the per-page Bulletin publication fee.



State of Idaho

**DIVISION OF FINANCIAL MANAGEMENT**

Executive Office of the Governor

**Proposed/Temporary Administrative Rules Form**

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

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

Return via email to: [info@dfm.idaho.gov](mailto:info@dfm.idaho.gov)

# INSTRUCTIONS FOR COMPLETING THE PARF

## (PROPOSED/TEMPORARY ADMINISTRATIVE RULES FORM)

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

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

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

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

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

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

**This rule is:**

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

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

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

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

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

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

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

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

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

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

# RULEMAKING CHECKLIST FORM

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

**IDAPA, Title, and Chapter Number and Chapter Name:** \_\_\_\_\_  
\_\_\_\_\_

**Agency:** \_\_\_\_\_

**Agency Contact and Phone Number:** \_\_\_\_\_

**Legal Authority for rulemaking - Idaho Code Section(s):** \_\_\_\_\_

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

Negotiated Rulemaking \_\_\_\_\_ Proposed Rulemaking \_\_\_\_\_ Temporary/Proposed Rulemaking \_\_\_\_\_

Temporary Rulemaking \_\_\_\_\_ Effective Date of Temporary Rule: \_\_\_\_\_

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

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

Pending Rule \_\_\_\_\_ Date Pending Rule Will Become Effective: \_\_\_\_\_

Amendment to Temporary Rule \_\_\_\_\_ Rescission of Temporary Rule \_\_\_\_\_

Correction to Pending Rule \_\_\_\_\_ Vacation of Rulemaking \_\_\_\_\_

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

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

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

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

**Does this rulemaking necessitate changes in other rules?**

If yes, please specify.

**Have any documents been Incorporated by Reference into this rulemaking?**

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

\_\_\_\_\_  
**HAVE YOU . . .**

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

\_\_\_\_\_  
**HAVE YOU INCLUDED . . .**

- \_\_\_\_\_ 1. An approved and signed DFM's Proposed/Temporary Administrative Rules Form (PARF)?
- \_\_\_\_\_ 2. An electronic version of the Notice and complete text of the rule changes in Word or RTF?



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## INSTRUCTIONS FOR COMPLETING THE RULEMAKING CHECKLIST FORM

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

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

**Example:**

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

Docket No. **44-0101-1101**

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

Docket No. **44-0101-1102**

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

**Example:**

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

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

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

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

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

**Negotiated Rulemaking** - Check if this is a negotiated rulemaking.

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

**Temporary Rulemaking** - Check if this is a temporary rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Do this rulemaking necessitate changes in other rules?**

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

**Does this rulemaking incorporate by reference any documents?**

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

**Section 67-5229, Idaho Code states:**

**Incorporation By Reference:**

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

- (b) A code, standard or rule adopted by any nationally recognized organization or association;
  - (c) A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or
  - (d) A final rule of a state agency; provided however, that a state agency shall not adopt a temporary rule incorporating by reference a rule of that agency that is being or has been repealed unless the rule providing for the incorporation has been reviewed and approved by the legislature.
- (2) The agency shall, as part of the rulemaking:
- a) Include in the notice of proposed rulemaking a brief written synopsis of why the incorporation is needed; and
  - (b) Note where an electronic copy can be obtained or provide an electronic link to the incorporated materials that at a minimum will be posted on the agency's website or included in the rule that is published in the administrative code on the website of the office of the administrative rules coordinator; and
  - (c) If otherwise unavailable, note where copyrighted or other proprietary materials can be viewed or purchased.
- (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.

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 the Administrative Rules Coordinator with the Notice of Rulemaking and any accompanying rule text in legislative format.**

## **Example - Notice of Negotiated Rulemaking**

### **IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES**

#### **44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO**

**DOCKET NO. 44-0102-1101 (OAR will assign)**

#### **NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING**

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

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

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

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

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

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

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

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

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

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

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

## **Example - Notice of Proposed Rulemaking With Fees or Charges**

### **IDAPA 44 – OFFICE OF ADMINISTRATIVE RULES COORDINATOR**

#### **44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO**

**DOCKET NO. 44-0102-1101 (OARC will assign)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any specific section(s) of the Idaho Code or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than *(include a date that is at least 14 days after publication of the Bulletin)*.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

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

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:  
*(If a fee is being imposed or increased by this rulemaking, include a descriptive summary of the fee involved and cite the specific statute authorizing the fee.)*

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:  
*(If a negative fiscal impact greater than \$10,000 will occur as a result of the changes being made, include a descriptive summary of the fiscal impact involved.)*

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

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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:  
*(If applicable, include a brief summary of why it is necessary to incorporate by reference these materials.)*

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before *(this date must be at least 21 days after the publication date of the Administrative Bulletin)*.

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

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

**Example - Notice of Adoption of Temporary Rulemaking**

**IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES**

**44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO**

**DOCKET NO. 44-0102-1101 (OAR will assign)**

**NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

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

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

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

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

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

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

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

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

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

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

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

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

**IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES COORDINATOR**

**44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO**

**DOCKET NO. 44-0102-1101 (OAR will assign)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

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

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) *(include the agency's specific statutory authority for rulemaking)*, Idaho Code, and *(include any specific section(s) of the Idaho Code or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking)*.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than *(include a date that is at least fourteen (14) days after publication of the Bulletin)*.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

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

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

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

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

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

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

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

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

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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

*(If applicable, include a brief summary of why it is necessary to incorporate by reference these materials.)*

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before *(this date must be at least twenty-one (21) days after*

*the publication of the Administrative Bulletin).*

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

*Name, Title  
Agency/Division*

*Physical Address  
Mailing Address*

*City, State and Zip  
Phone, fax*



**Example - Pending Rule Notice With No Changes to Text**

**IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES COORDINATOR**

**44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO**

**DOCKET NO. 44-0102-1101**

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

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

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

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

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

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

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

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

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

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

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

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

**Example - Pending Fee Rule Notice With No Changes to Text**

**IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES COORDINATOR**

**44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO**

**DOCKET NO. 44-0102-1001**

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

**NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

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

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

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

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

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

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

*(Include a descriptive summary of the fee involved)*

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

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

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

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

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

## **Example - Notice of Final Rulemaking**

### **IDAPA 44 - OFFICE OF ADMINISTRATIVE RULES**

#### **44.01.02 - RULES GOVERNING RULE WRITING IN IDAHO**

**DOCKET NO. 44-0102-1101**

*(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)*.

Section 201 of IDAPA 13.01.11 is being reprinted as codified following this notice. Any additional amendments made to this rule under this docket that were not affected by SCR 122 became final and effective upon adoption of SCR 122 and have been codified.

**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)*

# **RULE WRITING STYLE, FORMAT, AND CONTENT**

## **I. INTRODUCTION**

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

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

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

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

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

## **II. GENERAL RULE WRITING GUIDELINES**

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

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

## A. STYLE

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

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

### 1. CONSISTENCY

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

**Do Not Say:**

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

**Say:**

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:**

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

**Say:**

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:**

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

**Say:**

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

### 2. SIMPLICITY

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

**3. CLARITY**

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

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

**Do Not Say:**

vehicles  
firearms  
aircraft

**If You Mean:**

automobiles  
handguns  
helicopters

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

**Do Not Say:**

Water resources loan plan

**If You Mean:**

A loan plan for water resources

Avoid the use of split infinitives.

**Do Not Say:**

It is necessary under this section  
to promptly reply.

**If You Mean:**

It is necessary under Section 003  
to reply promptly.

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

**Do Not Say:**

John saw Jane walking across the street.

**Say:**

John, while walking across the street, saw Jane.

**Unless You Mean:**

John saw Jane, who was walking across the street.

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

**Do Not Say:**

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

**Say:**

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

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

**Do Not Say:**

Each applicant for a license in Idaho...

**Say:**

Each license applicant from Idaho...

**Unless You Mean:**

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

### III. FORMAT AND FORMAT RELATED TOPICS

#### A. DO'S AND DON'TS

DO use FULL justification in formatting

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

DON'T use unusual fonts - Use only a standard 10 to 12 point font

DON'T use extra bolding

DON'T include headers or footers

DON'T add page numbers

DON'T insert page breaks

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

#### B. LEGISLATIVE FORMAT (STRIKEOUT/UNDERScore)

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

*Example:*

**122. VISION SERVICE**

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

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

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

**C. EFFECTIVE DATES**

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

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

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

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

***Example of a Temporary Rule Effective Date:***

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



*Example of a Proposed Rule Effective Date:*

**122. VISION SERVICES.**

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

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

**122. VISION SERVICES.**

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

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

**122. VISION SERVICES.**

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

## **D. ORGANIZATION WITHIN THE CHAPTER - REQUIRED SECTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## E. SECTION AND SUBSECTION FORMATTING

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

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

*Example of a Major Section:*

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

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

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

*Example of the Subsection level:*

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

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

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

*Example of the Paragraph level:*

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

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

*Example of the Subparagraph level:*

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

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

## F. RESERVED SECTIONS

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

*Example:*

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

## G. BREAK IN CONTINUITY OF SECTIONS

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

**(BREAK IN CONTINUITY OF SECTIONS)**

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

## H. REPEAL, REWRITES, AND NEW CHAPTERS

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

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

The use of legislative format is not necessary when doing a repeal and rewrite of a chapter. Because it is not necessary to publish the text of the old rule, there is nothing to strike out. For all intents and purposes, the rewritten rule is a brand new rule and, since it is all new text, it does not

need to be underscored. This is generally a more cost effective method of publishing than striking out entire sections and underscoring many new changes because less text is actually published. 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 and legislative review. This allows for the submission of written comments on those parts of the rule that may not have changed in the rewrite. If there are parts of a rule that the agency does not want to reopen to public comment, then the standard format for rulemaking should be used to avoid this situation.

## **I. RENUMBERING**

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

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

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

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

**Example of Renumbering of Rules**

**OLD RULE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**333. -- 350. (RESERVED).**

**NEW RULE**

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

Family services workers shall identify and, if necessary, apply on behalf of the child for income or benefits from one (1) or every available sources including Social Security, veterans' benefits, tribal benefits, or estates of deceased parents. The address of the payee shall be the regional Child Support Services office. (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. CONTENT - GENERAL GUIDELINES 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 versa, as appropriate. Rule writers should not include inclusive gender provisions within their chapters of rules. As a result, such phrases as “he or she” or “his/her” are unnecessary. The only settings in which a gender-based distinction is appropriate are rules requiring sex differentiation, as in certain health rules. To the extent possible, the rule writer should use gender-neutral terms and try to avoid awkward, coined, or artificial terms.

### **C. PUNCTUATION**

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

### **D. CAPITALIZATION**

#### **1. General**

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

## 2. Capitalize

The following should be capitalized:

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

## 3. Do Not Capitalize

The following should not be capitalized:

- generic political subdivisions, as in “state of Idaho,” or “county of Boise,” except when such



terms follow the names of the subdivisions, as in “Boise County”;

- titles of federal, state, local, and judicial officials, as in “governor,” “president,” “commissioner,” “representative,” “director,” “attorney general,” “judge,” “justice,” “chief justice,” or “treasurer,” unless used to refer to a particular person as in “Governor Kempthorne”;

- the words “federal,” “state,” or “court” when not part of a proper name, except when “Supreme Court” refers to the Idaho Supreme Court; and

- words merely indicating geographic location such as “northern Idaho”.

## **E. NUMBERS IN TEXT**

### **1. General Numerical Text**

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

Four (4) persons  
fifteen (15) cats

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

**Do Not Say:**

Applicants shall be more than  
21 years old.

**Say:**

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 (when citing to a specific chapter of the Idaho Code)  
Section 67-5201, Idaho Code (when citing to a specific section of the Idaho Code)  
IDAPA 44.01.01.000  
28 U.S.C. Section 105(a)  
42 CFR 2.1

## **G. ORDINAL NUMBERS - FIRST, SECOND, ETC.**

When using the words “first,” “second,” and so on, it is not necessary to use the number.

**Do Not Say:**

first (1st)

**Say:**

first

## **H. SINGULAR VERB TO EXPRESS DOLLARS**

References to dollars should be used with a singular verb.

**Do Not Say:**

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

**Say:**

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

**I. FORMULAS**

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

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

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

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

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

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

**J. WORDS AND PHRASES**

**1. Exceptions**

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

**Do Not Say:**

- a. All persons except those eighteen (18) years old or older shall...

**Say:**

- 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

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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 known 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:**

Each corporation and/or bank shall...

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

**Say:**

Each corporation, bank, or both, shall...

...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:**

a. The director will submit a budget.

**Say:**

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:**

a. The director is authorized to issue an order.

**Say:**

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:**

The commissioner shall issue a certificate to an insurance company.

The commissioner may issue a certificate to an insurance company.

**Say:**

The commissioner shall issue a certificate to each insurance company.

The commissioner may issue a certificate to any insurance company.

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

**Do Not Say:**

All qualified employees shall...

**Say:**

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:**

If the complaint is filed . . .

When the applicant is qualified . . .

**Say:**

When the complaint is filed . . .

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 not comprise the whole. “Comprised of” is a wordy expression and should not be used.

The board comprises ten (10) members.

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

## **K. CITATIONS TO OTHER RULES OR CODES**

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

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

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

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

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

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

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

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

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

# ACCESSING IDAHO'S ADMINISTRATIVE RULES

## THE IDAHO ADMINISTRATIVE BULLETIN

Idaho law requires that state agencies provide public notice of all rulemaking actions and, at specific times, invite public input regarding those rulemaking actions. This public notice and invitation to participate in a rulemaking is published in the Idaho Administrative Bulletin (Bulletin). The Bulletin is an electronic-only publication that is accessible on line and is published on the first Wednesday of each month by the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin makes public all official rulemaking notices and rule text for all negotiated, proposed, temporary, pending, and final rulemaking actions of a state agency. Other documents required by law to be published in the Bulletin include executive orders of the governor, concurrent resolutions of the legislature affecting rules, rulemaking indexes, and other legal or regulatory documents requiring public notice.

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is generally referred to by the month in which it publishes, however, each volume of the Bulletin is officially cited by year and month or issue number. For example, Volume 09-1 refers to the first Bulletin issued in calendar year 2009 (January Bulletin), Volume 10-4 refers to the fourth Bulletin issued in calendar year 2010 (April Bulletin), etc. Each Bulletin is dated with official publication date, the first Wednesday of each month. The following is an official citation to the Bulletin: “...*the May 4, 2011, Idaho Administrative Bulletin, Volume 11-5.*”

## RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The Idaho Administrative Code (Section 67-5204, Idaho Code) is published once a year after the conclusion of the legislative session. The Code is a compilation of all final and temporary administrative rules in effect in Idaho.

Temporary rules that have been extended by concurrent resolution and pending rules that have been approved during the legislative session as final rules are codified into the Administrative Code. Proposed and pending rules are published only in the Bulletin.

The **Cumulative Rulemaking Index** of Idaho Administrative Rules is effective for determining the status of any particular rule and whether the rule remains in effect, has changed, or is undergoing changes at any given time. The index lists each rulemaking by docket number, gives the status of any rulemaking activity (i.e. proposed, pending, etc.), cites the Bulletin volume number in which the rulemaking was published, and shows an effective date, if applicable. The complete Cumulative Rulemaking Index is published electronically on the Rules Coordinator's website and is updated each month with the publication of the Bulletin. It can be found at the following link “Cumulative Rulemaking Index”: <http://adm.idaho.gov/adminrules/bulletin/cumindex.htm>



## **AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN**

The Idaho Administrative Code and all monthly Administrative Bulletins are available on line through the Rules Coordinator's website. A CD-ROM of the Administrative Code is distributed to the 44 county law libraries, most state university, college, and community college libraries, 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.

## **INTERNET: ONLINE ACCESS TO THE RULES AND RELATED DOCUMENTS**

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

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

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2011

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
11-1	January 2011	<b>*November 19, 2010</b>	January 5, 2011	January 26, 2011
11-2	February 2011	January 14, 2011	February 2, 2011	February 23, 2011
11-3	March 2011	February 11, 2011	March 2, 2011	March 23, 2011
11-4	April 2011	March 11, 2011	April 6, 2011	April 27, 2011
11-5	May 2011	April 8, 2011	May 4, 2011	May 25, 2011
11-6	June 2011	May 13, 2011	June 1, 2011	June 22, 2011
11-7	July 2011	June 10, 2011	July 6, 2011	July 27, 2011
11-8	August 2011	July 8, 2011	August 3, 2011	August 24, 2011
11-9	September 2011	August 5, 2011	September 7, 2011	September 28, 2011
11-10	October 2011	<b>**August 31, 2011</b>	October 5, 2011	October 26, 2011
11-11	November 2011	October 7, 2011	November 2, 2011	November 23, 2011
11-12	December 2011	November 4, 2011	December 7, 2011	December 28, 2011

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2012

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
12-1	January 2012	<b>*November 25, 2011</b>	January 4, 2012	January 25, 2012
12-2	February 2012	January 13, 2012	February 1, 2012	February 22, 2012
12-3	March 2012	February 10, 2012	March 7, 2012	March 28, 2012
12-4	April 2012	March 11, 2012	April 4, 2012	April 25, 2012
12-5	May 2012	April 6, 2012	May 2, 2012	May 23, 2012
12-6	June 2012	May 11, 2012	June 6, 2012	June 27, 2012
12-7	July 2012	June 8, 2012	July 4, 2012	July 25, 2012
12-8	August 2012	July 6, 2012	August 1, 2012	August 22, 2012
12-9	September 2012	August 3, 2012	September 5, 2012	September 28, 2012
12-10	October 2012	<b>**August 31, 2012</b>	October 3, 2012	October 24, 2012
12-11	November 2012	October 5, 2012	November 7, 2012	November 28, 2012
12-12	December 2012	November 2, 2012	December 5, 2012	December 26, 2012

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

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

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