

IDAHO ADMINISTRATIVE BULLETIN

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Volume 99-2

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

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

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 98-1 refers to the first Bulletin issued in calendar year 1998, Bulletin 99-1 refers to the first Bulletin issued in calendar year 1999, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 1999 is cited as Volume 99-1. The December 1998 Bulletin is cited as Volume 98-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rule-Making**, printed in each Bulletin.*

TYPES OF RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rule-making process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rule-making. In the majority of cases, the process begins with proposed rule-making and ends with final rule-making. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULE

Negotiated rule-making is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rule-making whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rule-making to the temporary and/or proposed rule stage.

PROPOSED RULE

A proposed rule-making is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rule-making in the Bulletin. The notice of proposed rule-making must include:

- a) the specific statutory authority for the rule-making including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rule-making;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rule-making criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rule-making if it decides not to proceed further with the promulgation process.

TEMPORARY RULE

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

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

If a rule-making meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.

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

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

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rule-making that is being vacated.

PENDING RULE

A pending rule is a rule that has been adopted by an agency under the regular rule-making process and

remains subject to legislative review before it becomes a final, enforceable rule.

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

- a) 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; and
- d) an identification of any portion of the rule imposing or increasing a fee or charge.

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.

FINAL RULE

A final rule is a rule that has been adopted by an agency under the regular rule-making process and is in effect.

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

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

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

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0004, telephone

(208) 334-3577.

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

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

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

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address:

<http://www.state.id.us/> - from Idaho Home Page select the Administrative Rules link.

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 334-3577.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.05.01.060.02.c.ii.

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Subsection 060.02.c.

"ii." refers to Subsection 060.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rule-making actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-9901). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 38-0501-9901"

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

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

"9901" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rule-making action of the chapter published in calendar year 1999.

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

"(BREAK IN CONTINUITY OF SECTIONS)"

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

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

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

"...in accordance with IDAPA 38.05.01.201."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

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

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

BULLETIN PUBLICATION SCHEDULE FOR 1999

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
99-1	January, 1999	November 18, 1998	January 6, 1999
99-2	February, 1999	December 23, 1998	February 3, 1999
99-3	March, 1999	January 20, 1999	March 3, 1999
99-4	April, 1999	February 24, 1999	April 7, 1999
99-5	May, 1999	March 24, 1999	May 5, 1999
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99-8	August, 1999	June 23, 1999	August 4, 1999
99-9	September, 1999	July 21, 1999	September 1, 1999
99-10	October, 1999	August 25, 1999	October 6, 1999
99-11	November, 1999	September 22, 1999	November 3, 1999
99-12	December, 1999	October 20, 1999	December 1, 1999

BULLETIN PUBLICATION SCHEDULE FOR 2000

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
00-1	January, 2000	November 17, 1999	January 5, 2000
00-2	February, 2000	December 22, 1999	February 2, 2000
00-3	March, 2000	January 19, 2000	March 1, 2000
00-4	April, 2000	February 23, 2000	April 5, 2000
00-5	May, 2000	March 22, 2000	May 3, 2000
00-6	June, 2000	April 19, 2000	June 7, 2000
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00-11	November, 2000	September 20, 2000	November 1, 2000
00-12	December, 2000	October 25, 2000	December 6, 2000

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IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.02.01 - RULES OF THE IDAHO STATE BRAND BOARD
DOCKET NO. 11-0201-9801
NOTICE OF CORRECTION

CORRECTION: Docket No. 11-0201-9801 was incorrectly published as a pending rule in the December 6, 1998 Idaho Administrative Bulletin prior to the rule being published as a proposed rule. The pending rule is being voided pursuant to the provisions of the Administrative Procedure Act. This correction is being done in conjunction with the Office of the Administrative Rules Coordinator.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the correction being made:

The Department of Law Enforcement published a temporary rule in the March 4, 1998, Idaho Administrative Bulletin, Volume 98-3, which was effective January 1, 1998. The Department subsequently published a Notice of Pending Rule in the December 1, 1998, Idaho Administrative Bulletin, Volume 98-12. The pending rule is invalid because the Department failed to publish a Notice of Proposed Rule pursuant to Section 67-5221, Idaho Code under the Administrative Procedure Act. Therefore, the pending rule is voided and the Department will publish a Notice of Proposed Rule at the close of the 1999 Idaho State Legislative Session.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the correction to this rulemaking, contact Larry A. Hayhurst at (208) 884-7070.

DATED this 4th day of January, 1999.

Larry A. Hayhurst
State Brand Inspector
Idaho State Brand Board
700 South Stratford
PO Box 1177
Meridian, ID 83680-3377
Phone 208-884-7070 - FAX 208-884-7097

IDAPA 20 - IDAHO DEPARTMENT OF LANDS
20.03.04 - THE REGULATION OF BEDS, WATERS AND AIRSPACE
OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-9801

NOTICE OF CORRECTION TO PENDING RULE

CORRECTION: This notice corrects typographical errors made during the publication of the pending rule. Several errors were discovered after the publication of the pending rule which should have been incorporated into the pending rule prior to the rule being submitted for review and adoption by the 1999 legislature. The corrections have been brought to the attention of the committee reviewing this rule and are being corrected to reflect what has been reviewed by the committee. The pending rule was published in the November 4, 1998, Idaho Administrative Bulletin, Volume 98-11, pages 309 through 317. This correction is being done in conjunction with the Office of the Administrative Rules Coordinator.

EFFECTIVE DATE: The corrections to pending rule will also be corrected in the temporary rule and the effective date of the changes is July 1, 1998.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 58-104(9) and 58-1301, et seq., Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the correction to pending rule:

The correction to the pending rule is necessary to correct a number of nonsubstantive typographical, transcriptional, and clerical corrections to the rules pursuant to Sections 67-5227 and 67-5228, Idaho Code. These corrections are being made to Subsections 010.02, 010.21, 015.03.a., 025.06, 030.09, 060.04, 060.05 and 060.13 and are published in this Bulletin and shown in legislative format.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the correction to pending rule contact: Dennis Stevenson, Assistant Rules Coordinator, Office of Administrative Rules, Idaho Department of Administration, (208) 334-3558.

DATED this 19th day of January 1999.

Stanley F. Hamilton, Director
Idaho Department of Lands
954 West Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
(208) 334-0200 – Telephone
(208) 334-2339 – Fax

TEXT OF DOCKET NO. 20-0304-9801

010. DEFINITIONS.

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)
02. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark

resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (9-13-90)

03. Beds of Navigable Lakes. The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)

04. Board. The Board of Land Commissioners of the State of Idaho or its authorized representative. (9-13-90)

05. Commercial Navigational Encroachment. A navigational encroachment for the use of which patrons pay a fee. (9-13-90)

06. Community Docks. Structures that provide moorage facilities for more than two (2) adjacent riparian owners, or for a homeowners' association that is a riparian owner owning a riparian common area including riparian rights. A community dock shall not have less than fifty (50) feet combined shoreline frontage. A community dock shall be considered a commercial navigational aid for purposes of processing the application. ~~(7-1-98)~~(7-1-98)T

07. Contested Case Hearing. A formal hearing conducted pursuant to these rules, Idaho Code Title 67, Chapter 52, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners". This type of hearing requires the formal designation of parties as set forth in the board's Rules of Practice and Procedure, IDAPA 20.01.01, and is conducted like a trial. Members of the public not wishing to formally intervene in contested case hearings as a party may nevertheless participate in such hearings as public witnesses pursuant to IDAPA 20.01.01. (7-1-98)

08. Department. The Department of Lands. (9-13-90)

09. Director. The director of the Department of Lands or his designee. (9-13-90)

10. Encroachments in Aid of Navigation. And includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to navigability on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments". (9-13-90)

11. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes moored permanently or in any one place for a substantial period of time and used as either a permanent or temporary place of abode or residence. (9-13-90)

12. Line of Navigability. The dock line established by existing docks or if no dock line exists then such distance below the low water mark as will afford sufficient draft for water craft customarily in use on that particular body of water. (7-1-98)

13. Low Water Mark. That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years. (7-1-98)

14. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetaiton and destroy its value for agricultural purposes. (9-13-90)

15. Navigable Lake. Any permanent body of relatively still or slack water, not privately owned and not a mere marsh and capable of accommodating boats or canoes and includes man-made reservoirs except where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (9-13-90)

16. Party. Each person or agency named or admitted as a party, or property seeking and entitled as of right to be admitted as a party to a hearing on an application for an encroachment. (9-13-90)

17. Person. Any individual, partnership, association, company, corporation, municipality, county, state or federal agency, or other entity. (9-13-90)

18. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

19. Public Meeting Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (7-1-98)

20. Public Trust Doctrine. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (7-1-98)T

~~20~~1. Riparian or Littoral Rights. Only the rights of owners or lessees of land adjacent to navigable lakes and to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters or to remove bed materials from state-owned lakebeds. (~~9-13-90~~)(7-1-98)T

~~21~~2. Riparian Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian rights that have been segregated from the fee specifically by deed or grant. (7-1-98)

~~22~~3. Single-family Dock. A structure providing moorage facilities that serves one (1) waterfront lot having frontage of no less than twenty-five (25) feet. (7-1-98)

~~23~~4. Submerged Lands. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

~~24~~5. Two (2) family Dock. A structure providing moorage facilities that serves two (2) adjacent waterfront lots having a combined frontage of no less than fifty (50) feet. Usually the structure is located on the common riparian property line. (7-1-98)

~~25~~6. Uplands. The land bordering on navigable lakes, rivers and streams. (9-13-90)

(BREAK IN CONTINUITY OF SECTIONS)

015. DOCK STANDARDS AND FLOAT HOME REQUIREMENTS.

01. Single-family and Two-family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ~~six ten~~ ten (610) feet in width. (~~7-1-98~~)(7-1-98)T

b. Total surface area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (7-1-98)

c. No portion of the docking facility shall extend more than one hundred (100) feet waterward of the natural or ordinary high water mark or if applicable the artificial high water mark or further than three (3) feet of water depth at low water. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks. (7-1-98)

d. Where feasible, all docks, piers or similar structures shall be constructed to protrude as nearly as possible perpendicular to the general shoreline. (7-1-98)

02. Variance. A variance to the standards contained in Subsection 015.01 may be approved by the director where it can be justified by site specific considerations such as the distance to the established line of navigation. (7-1-98)

03. Community Docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark ~~of or~~ artificial high water mark shall exceed ~~six ten~~ (610) feet in width. No part of the fixed portion of the dock shall exceed ~~six ten~~ (610) feet in width. This includes fixed piers and approach ramps. (7-1-98)(7-1-98)T

b. Moorage facilities will be limited to size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (7-1-98)

04. Breakwater. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (7-1-98)

05. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet ~~sway~~ away from riparian right lines of adjacent riparian owners ~~and shall be located within dock line~~. One (1) mooring buoy per riparian owner shall be allowed. (7-1-98)(7-1-98)T

06. Float Home Construction, Alteration or Relocation. (7-1-98)

a. Applications for permits to construct new float homes will not be accepted. (7-1-98)

b. Applications for relocation of float homes existing prior to April 5, 1974, shall be subject to the following requirements: (7-1-98)

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the department. (7-1-98)

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Health and Welfare or the appropriate local health authority. (7-1-98)

c. Applications and approved local permits are required for replacement or enlargement of float homes. Adding another story to a float home shall require a permit. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

025. PROCESSING OF APPLICATIONS FOR NONCOMMERCIAL SINGLE-FAMILY AND JOINT TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.

01. Noncommercial Navigational Encroachments. Applications for navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. (7-1-98)

02. Adjacent Riparian Owners. If a proposed encroachment referred to in Subsection 025.01 may infringe upon the riparian or littoral rights of an adjacent riparian owner, the director shall require the applicant to secure the written consent of the adjacent riparian owner. (7-1-98)

03. Notification of Adjacent Riparian Owners. If the signature of the adjacent riparian owner is not required, the department shall provide a copy of such application to the riparian owners immediately adjacent the applicant's property. Such adjacent riparian owner shall have twenty-one (21) days from the date of the mailing to provide comments to the department. This notice will be sent by regular mail to the adjacent riparian owners usual place of address, which, if not known, shall be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent riparian owners' signatures as concurring with the application in lieu of the twenty-one (21) day notice period. ~~(7-1-98)~~(7-1-98)T

04. Written Objections. If an adjacent riparian owner files written objections to the application with the director within twenty-one (21) days from the date of service or receipt of notice of the completed application, the director shall fix a time and a place for hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the twenty-one (21) day period by mail or hand delivery in the office of the department in Coeur d'Alene. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. (7-1-98)

05. Unusual Circumstances. Even though no objection is filed by an adjacent riparian owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. (7-1-98)

06. Hearings. Hearings fixed by the director following an objection pursuant to Subsection 025.03~~4~~ or the Director's own determination pursuant to Subsection 025.04~~5~~ shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. Said hearing shall be in the nature of a formal contested case hearing as defined herein by Subsection 010.07. In such hearings the Department shall act as the fact finder and not a party. The Director, at his discretion, shall designate a Department representative to sit as the hearing officer. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. ~~(7-1-98)~~(7-1-98)T

07. Decision. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.04 or 025.05 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing. (7-1-98)

08. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved party who participated at a hearing, shall have twenty (20) days from the date of the Director's decision to required reconsideration thereof. If reconsideration is requested, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision. (7-1-98)

09. Judicial Review. Any applicant aggrieved by the Director's final decision on reconsideration, or other aggrieved party appearing at a reconsideration hearing, shall have a right to have the proceedings and final decision reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. An adjacent riparian owner shall be required to deposit with the court a five hundred dollars (\$500) appeal bond insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal. (7-1-98)

10. Disposition Without Hearing. In the event no objection to the proposed encroachment and request for hearing is filed with the director by an adjacent riparian owner under Subsection 025.04, or hearing ordered by the director under Subsection 025.05, then the director shall act upon an application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application and failure to act within such time shall constitute approval of the application. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community and Commercial Navigational Encroachments. Upon receipt of an application for a nonnavigational encroachment, a community dock, or a commercial navigational encroachment, or for a navigational encroachment extending beyond the line of navigability, the director shall, within ten (10) days of acceptance for filing of the application, cause notice of the application to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed, however, that if the director orders a hearing on the application in the first instance within the time for publication of the notice, the director shall dispense with publication of the notice of the application and shall proceed instead to publish notice of the hearing as provided in Subsection 025.06. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process unless it is of a size that it requires an easement from the state of Idaho. (7-1-98)

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is not other feasible alternative with less impact on public trust values. (7-1-98)

03. Agency Comments. Upon request or when the director deems it appropriate, the director may furnish copies of the application and plans to federal, state and local agencies and to adjacent riparian owners, requesting comment on the likely effect of the proposed encroachment upon adjacent riparian property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of a copy of the application and plans, such agencies shall notify the director of their opinions and recommendation, if any, for alternate plans determined by such agencies to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent riparian property or other lake value factors and public trust values. (7-1-98)

04. Written Objections. Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake in question, or any state, federal or local agency may, within thirty (30) days of the first date of publication file with the director written objections to the proposed encroachment and a request for a public hearing on the application. Any person or agency requesting a hearing on the application shall deposit and pay to the director an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection ~~025.13~~ 030.05. ~~(7-1-98)~~(7-1-98)T

05. Hearing. Notice of the time and place of public hearing on the application shall be published by the director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing shall be held within ninety (90) days from the date the application is accepted for filing. (7-1-98)

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments shall also be received by the Department. (7-1-98)

07. Decision After Hearing. The director shall render a decision within forty-five (45) days after close of the public hearing. A copy of his decision shall be mailed to the applicant and to each person or agency appearing

at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment.

(7-1-98)

08. Decision Where No Hearing. In the event no objection to the proposed encroachment is filed with the director and no hearing is requested under Subsection 030.04, or ordered by the director under Subsection 030.01, the director, based upon his investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property, lake value factors and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality, shall prepare and forward to the applicant either personally or by registered or certified mail, his decision.

(7-1-98)

09. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved persons who appeared at a the public hearing and gave oral or written testimony, shall have twenty (20) days from the date of the Director's decision to ~~requires request~~ reconsideration thereof. If reconsideration is required, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision.

~~(7-1-98)~~(7-1-98)T

10. Judicial Review. Any applicant aggrieved by the Director's final decision on reconsideration or other aggrieved party appearing at a reconsideration hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit with the court a five hundred dollar (\$500) appeal bond insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director.

(7-1-98)

11. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the director shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the director determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, he shall grant the permit.

(9-13-90)

(BREAK IN CONTINUITY OF SECTIONS)

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or construction of an encroachment may commence only when the permit is issued or when the director notifies the applicant in writing that installation may be commenced or when the director has failed to act in accordance with Subsection 025.0910.

~~(9-13-90)~~(7-1-98)T

02. Construction. Where feasible, all docks, piers or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline and shall be constructed so as not to interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent properties.

(9-13-90)

03. Water Access. Docks, piers or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period, except that no structure may extend beyond the normal accepted line of navigability

established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, after public hearing, designate a line of navigability for the purpose of effective administration of these rules. (9-13-90)

04. **Excavated or Dredged Channels.** An excavated or dredged channel or basin to provide access to navigable waters may be authorized only when the applicant can show that it will provide a clear environmental, economic, or social benefit to the people of the state and will not result in any appreciable environmental degradation. A channel or basin shall not be approved if it appears that the cumulative effect of the proposed channel or basin plus all reasonably foreseeable future basins or channels in the same navigable lake would be adverse to fisheries or water quality. Whenever practical, such channels or basins shall be located to serve more than one (1) riparian owner; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonriparian owners. ~~(7-1-98)~~(7-1-98)T

05. **Presumed Adverse Effect.** It will be presumed, subject to rebuttal, that commercial navigational encroachments, community docks or nonnavigational encroachments will have an adverse effect upon adjacent riparian property if located closer than twenty-five (25) feet to adjacent riparian property lines and that single-family and two-family navigational encroachments will have a like adverse effect upon adjacent riparian property if located closer than ten (10) feet from adjacent riparian property lines. Consent of the adjacent riparian owner or owners will automatically rebut the presumption. ~~(7-1-98)~~(7-1-98)T

06. **Upland Vehicle Parking.** Commercial navigational encroachments shall provide upland vehicle parking equivalent to one parking space per two (2) watercraft moorages. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted. (9-13-90)

07. **Weather Conditions.** Encroachments shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind and waves. (9-13-90)

08. **Markers.** If the director determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, he shall specify in the permit approved markers be used to identify clearly the extent and size of the encroachment. (7-1-98)

09. **Removal of Waste.** Pilings, anchors and other structures, or material or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. (9-13-90)

10. **Seawalls or Breakwaters.** Seawalls or breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need; provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave or ice damage, or used to control traffic in busy areas of lakes. (9-13-90)

11. **Compliance With Permit.** All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. (7-1-98)

12. **Overhead Clearance.** Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed twenty (20) feet unless the director shall determine after hearing that it is in the overall public interest that the clearance be in excess of twenty (20) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The director shall specify in the permit the amount of overhead clearance and markings required. (9-13-90)

13. Overhead Clearance; Other Requirements. When the permit provides for overhead clearance or safety markings under Subsection 060.078, the director shall consider the applicable requirements of the U.S. Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state or local regulations. ~~(7-1-98)~~(7-1-98)T

14. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or otherwise extended. (7-1-98)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-9803
NOTICE OF CORRECTION TO PENDING RULE

CORRECTION: This notice corrects a typographical error made during the publication of this rule. The error was made in the renumbering of Section 35.01.03.165. The Section was renumbered from 35.01.03.165 to Section 35.01.03.635. The text of the Section is correct, however, the Section number will remain 35.01.03.165. The original proposed rule text was published in the September 2, 1998, Idaho Administrative Bulletin, Volume 98-9 on pages 127 and 128. No other corrections to the original docket are being made and all other text of the rule remains unchanged. This correction is being done in conjunction with the Office of the Administrative Rules Coordinator.

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule and has made a correction to the pending rule. The action is authorized pursuant to Section 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a description of the substance of the correction to the pending rule:

IDAPA 35.01.03.165 will not be changed. The Section number will stay as is.

The pending rules are being adopted as proposed. The original text of the proposed rule was published in the September 2, 1998, Administrative Bulletin, Volume 98-9, pages 127 and 128.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the correction to the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 7th day of December, 1998.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36, Boise, ID 83722
(208) 334-7530
FAX (208) 334-7844

Subjects Affected Index

IDAPA 20 - IDAHO DEPARTMENT OF LANDS

20.03.04 - THE REGULATION OF BEDS, WATERS AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

Docket No. 20-0304-9801

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Bulletin Summary of Proposed Rule-Making

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

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

There are no proposed rules being promulgated or published in this issue of the Bulletin. There are three corrections to pending rule notices and text that have been published in this issue.

Please refer to the Idaho Administrative Bulletin, **February 3, 1999, Volume 99-2** for notices and text of all rule-makings, public hearing schedules, governor's executives orders, and agency contact names.

Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.

Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering call (208) 334-3577 or write the Office of the Administrative Rules Coordinator, Department of Administration, 650 W. State St., Room 100, Boise, Idaho 83720. Visa and Mastercard accepted.

The Idaho Administrative Bulletin and Administrative Code are available on the Internet at the following address: **<http://www.state.id.us/>** - from the State of Idaho Home Page select Administration Rules.

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