

# ***IDAHO ADMINISTRATIVE BULLETIN***

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***April 7, 2004 -- Volume 04-4***

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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 monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.*

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

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletins are cited by year and volume number. For example, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002, 03-1 refers to the first Bulletin issued in calendar year 2003. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No.02-1 refers to January 2002; Volume No. 02-2 refers to February 2002; and so forth. Example: The Bulletin published in January of 2003 is cited as Volume 03-1, the December 2002 Bulletin is cited as Volume 02-12, etc.*

## **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 adopted and 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 Rulemaking**, printed in each Bulletin.*

## **TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

*The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings include all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.*

### **NEGOTIATED RULEMAKING**

*Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the*

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

### **PROPOSED RULEMAKING**

*A proposed rulemaking is an action by an agency 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 rulemaking in the Bulletin. The notice of proposed rulemaking must include:*

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

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

### **TEMPORARY RULEMAKING**

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

*A temporary rule expires at the conclusion of the next succeeding regular 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.*

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

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

### **PENDING RULEMAKING**

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

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending 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 RULEMAKING**

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

*No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A Notice of Final Rule must be published in the 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, BYU Idaho Library, and Northwest Nazarene College Library.*

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## SUBSCRIPTIONS AND DISTRIBUTION

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

*The 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 Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

**Internet Access** - The Administrative Code and Administrative Bulletin, individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

**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) 332-1820 or FAX (208) 332-1896.

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

### **IDAPA 38.05.01.060.02.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 Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

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## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). 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. 38-0501-0301"

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

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

"0301" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2003.

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 CALENDAR YEAR 2004

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

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05-1	January, 2005	<b>*November 17, 2004</b>	January 5, 2005	January 26, 2005
05-2	February, 2005	December 31, 2004	February 2, 2005	February 23, 2005
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05-4	April, 2005	March 4, 2005	April 6, 2005	April 27, 2005
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05-8	August, 2005	July 1, 2005	August 3, 2005	August 24, 2005
05-9	September, 2005	July 29, 2005	September 7, 2005	September 28, 2005
05-10	October, 2005	<b>**August 24, 2005</b>	October 5, 2005	October 26, 2005
05-11	November, 2005	September 30, 2005	November 2, 2005	November 23, 2005
05-12	December, 2005	October 28, 2005	December 7, 2005	December 28, 2005

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

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



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**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-07**

**ESTABLISHMENT OF THE STATEWIDE INTEROPERABILITY EXECUTIVE COUNCIL**

---

*WHEREAS, the public safety of all Idahoans is of paramount importance; and*

*WHEREAS, public safety communications provides a critical role protecting the lives and property of the citizens of Idaho; and*

*WHEREAS, the State's public safety communications infrastructure is rapidly becoming outdated; and*

*WHEREAS, the Federal Communications Commission is adopting changes that will affect the ability of public safety communications systems to interoperate with one another, due to new technology and shifts in standards; and*

*WHEREAS, the effectiveness of public safety communications between jurisdictions to cooperate and coordinate voice and data information is critical to the mission of public safety; and*

*WHEREAS, state agencies along with federal, local, tribal, and private entities with similar communications requirements should work cooperatively and identify approaches to promote and enhance statewide interoperability; and*

*WHEREAS, the Idaho Legislature annually appropriates a significant amount of state funds for agency wireless radio communications which could benefit from coordination; and*

*WHEREAS, there exists opportunities to assist in the promotion of coordination and cooperation of a statewide interoperability goal, which is an ongoing and long-term effort.*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by authority vested in me by the Constitution and laws of the State of Idaho, do hereby order:*

1. *There is hereby created the Statewide Interoperability Executive Council (SIEC).*
2. *The purpose of the SIEC shall be to provide policy level direction and promote efficient and effective use of resources for matters related to public safety wireless radio interoperability. To that end it shall;*
  - a. *Develop a statewide vision for interoperable communications;*
  - b. *Develop standards for public safety communications;*
  - c. *Promote cooperation among state, federal, tribal, and local public safety agencies in addressing statewide radio interoperability needs in Idaho;*
  - d. *Review priorities for statewide radio interoperability needs and assist in the development of projects, plans, policies, standards, priorities and guidelines for radio interoperability;*
  - e. *Ensure adequate wireless spectrum to accommodate all users;*
  - f. *Facilitate cooperative and contract arrangements to develop a statewide interoperable radio communications system infrastructure;*
  - g. *Research best practices of other states; and*
  - h. *Provide recommendations to the Governor and the Legislature, when appropriate, concerning issues related to statewide interoperable radio communications for public safety in Idaho.*
3. *The SIEC shall receive administrative staff support from the state agencies represented on the Council.*
4. *The SIEC will meet no less than four times annually.*
5. *The SIEC will appoint sub-committees consistent with the needs of the Council to address issues including, but not limited to: technical support and education issues regarding interoperable*

- communications in Idaho; Federal funding availability; and, outreach and liaison with Federal and other Statewide Interoperable Executive Councils in other states working on interoperable communications solutions.*
6. *The SIEC shall prepare and present a report to the Information Technology Resource Management Council by December 30 of each year describing the Council's activities and achievements of the previous year.*
  7. *A Chair person and Vice-Chair person shall be selected at that first meeting of the SIEC by the members present during that meeting. The term of office for the Chair and Vice-Chair shall be two years. The Chair and Vice-Chair may succeed themselves if approved by the Council.*
  8. *The SIEC shall be composed of the following member agencies with knowledge of and interest in the field of public safety radio communications technology with minimum representation consisting of:*
    - One (1) representative from the Idaho State Police;*
    - One (1) representative from the Idaho Transportation Department;*
    - One (1) representative from the Idaho Sheriff's Association;*
    - One (1) representative from the Idaho Chiefs of Police Association;*
    - One (1) representative from the Idaho Fire Chiefs Association;*
    - One (1) representative from the Idaho Association of Counties;*
    - One (1) representative of the Association of Idaho Cities;*
    - Two (2) representatives from the Military Division;*
    - One (1) representative from the Idaho Department of Administration;*
    - One (1) representative from Federal Law Enforcement;*
    - One (1) representative from the U.S. Department of the Interior;*
    - One (1) representative from the National Interagency Fire Center;*
    - One (1) representative from the Idaho Department of Correction;*
    - One (1) representative from the Department of Lands;*
    - One (1) representative from the Idaho Department of Fish and Game;*
    - One (1) representative from the Idaho Department of Health and Welfare; and*
    - One (1) representative from Tribal Government.*

*The SIEC may add additional member agencies as deemed appropriate.*

*The SIEC's membership shall be selected by the groups they represent and approved by the Governor.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this eleventh day of August in the year of our Lord two thousand and three, and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.*

\_\_\_\_\_  
*DIRK KEMPTHORNE*  
*GOVERNOR*

\_\_\_\_\_  
*BEN YSURSA*  
*SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-08**

**ESTABLISHMENT OF THE IDAHO HOMELAND SECURITY COUNCIL**

---

*WHEREAS, the Constitution of the State of Idaho requires that government provide for the public safety and security; and*

*WHEREAS, enemies of the United States, through acts of terrorism, have already attacked this nation's citizens and critical infrastructure; and*

*WHEREAS, those enemies have demonstrated a continuing desire to overthrow this nation's government, it's military, and the economic base of this nation and each of its sovereign state.*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state hereby establish an Idaho Homeland Security Council for the purpose of conducting planning and information sharing between executive level representatives of private sector critical infrastructure and representatives of state, tribal, local, and special districts of governmental agencies charged with maintaining the public health, safety, and security of the people of the State of Idaho.*

*It is the policy of the State of Idaho to strategically prepare its citizens and local communities, including private sector entities, within the budgetary and legal constraints imposed by the Legislature, to respond to, and recover from, the debilitating impact of both natural and man-caused disasters including paramilitary acts of terrorism and the potential use of weapons of mass destruction. Principal among those preparedness strategies is the protection of the state's critical infrastructure, upon which society depends to meet the basic essentials required for the preservation of life and economic survival. Critical Infrastructure is defined as "those systems and assets, physical or virtual, so vital to the well-being of the citizens of Idaho, that severely reduced capacity or destruction would have a debilitating impact on public health, safety, security and/or the state and local economy."*

*It shall be the mission of the Council to share information and planning resources in a protected environment under Section 9-340B, Idaho Code, to improve the capability of the public and private sectors to mitigate, prepare, respond, and recover from major disasters, including acts of terrorism and the use of weapons of mass destruction. The Council will, through the Council Chairman, make recommendations and periodically report its findings to the Governor.*

*The Council shall establish and maintain, through the Idaho Bureau of Disaster Services, a system for exchanging meaningful threat information to executives of critical infrastructure organizations, first responders, local government, state agencies and those private nonprofit organizations that are critical to the health and well-being of the citizens of the State of Idaho.*

*The Council shall develop recommendations that outline appropriate measures that could be implemented to assist public and private sector organizations with the protection of the state's critical infrastructure when credible threat information has been gathered from any source, and when there is a likelihood of attack on those assets and systems. Recommendations shall include measures for the operation of critical infrastructure when systems and assets are under duress as a result of threats, actual attacks of terrorism, or when the infrastructure is affected by major emergencies and natural or man-caused disasters.*

*The Council shall develop recommendations to improve preparedness planning, including economic recovery initiatives that are mutually inclusive and compatible with local, tribal, state, and federal response and recovery plans.*

*The Council shall be comprised of representatives of the following agencies and organizations:*

*Chairperson. In accordance with Section 46-1006, Idaho Code, the Adjutant General of the State of Idaho is the Governor's authorized representative for emergency planning, preparedness, response, and recovery from all hazards including paramilitary acts, such as terrorism and the use of weapons of mass destruction. The Adjutant General is hereby appointed as chair of the Idaho Homeland Security Council.*

*The Adjutant General shall recommend to the Governor the names of private and public sector executives to be appointed to the Idaho Homeland Security Council. Council members will be appointed by the Governor. Each appointed Council member shall chair a committee that will further reach out to those local, tribal, state and federal agencies and private organizations that are necessary to adequately plan and prepare for a successful response and recovery from acts of terrorism. The Adjutant General, acting on behalf of the Governor, may appoint private and public sector personnel to committees of the Council. All state agencies may be called upon by the Adjutant General to assist in planning and preparing for terrorism and the potential use of weapons of mass destruction.*

*Consolidation of State Terrorism Planning Activities:*

*To ensure that all state agency terrorism-preparedness objectives are compatible, directors of state agencies and heads of self-governing state agencies will submit agency terrorism preparedness plans to the Adjutant General through the Bureau of Disaster Services.*

*The Lieutenant Governor's Bioterrorism Planning Committee is, effective immediately, reformed under the Health Care and Medical Services Committee of the Idaho Homeland Security Council, chaired by the Director, Idaho Department of Health and Welfare.*

*Council and committee members will serve without remuneration or reimbursement for expenses, including related travel and per diem to attend council and committee meetings and other related Council functions.*

*Nothing in this Executive Order changes practices established by existing laws or previously established Executive Orders concerning preparedness for natural or man-caused disasters. Rather, this Executive Order establishes a central body for the review of terrorism plans and a preparedness activity at the state level that provides an avenue for private sector input and information sharing for the purpose of improving the survivability and operation of critical infrastructure in a terrorist environment.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this eleventh day of August in the year of our Lord two thousand and three and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.*

\_\_\_\_\_  
*DIRK KEMPTHORNE  
GOVERNOR*

\_\_\_\_\_  
*BEN YSURSA  
SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-09**

**FLYING THE POW/MIA FLAG OVER THE CAPITOL**

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*WHEREAS, the State of Idaho owes a lasting debt of gratitude to all heroic members of our Armed Forces who have risked their safety to defend the lives and liberty of others; and*

*WHEREAS, the State will not forget our Nation's prisoners of war and those missing in action (POWs/MIAs) and the devoted service they have bravely rendered to our country, and neither will the State of Idaho fail to meet its obligation to their families; and*

*WHEREAS, Idaho remembers those Americans who remain missing and unaccounted for; and*

*WHEREAS, our State is determined to keep faith with those who have so faithfully served and defended the United States; and*

*WHEREAS, Idaho recognizes the profound suffering of those who continue to await word of the fate of their loved ones, and the State is determined to help them gain the peace and consolation that word will bring; and*

*WHEREAS, the POW/MIA flag symbolizes Idaho's firm and united commitment to securing the release of any Americans who may still be held against their will, to obtaining the fullest possible accounting for the missing, and to repatriation of all recoverable American remains; and*

*WHEREAS, Executive Order 2003-03 establishes a schedule for flying the POW/MIA flag over the Idaho State Capitol Building, independent of this Executive Order;*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order as follows:*

*The POW/MIA flag shall be flown over the Idaho State Capitol Building from November 11, 2003, Veterans Day, until the opening of the Idaho State Veterans Cemetery, at which time it will be transferred to and permanently flown at the cemetery. The POW/MIA flag is a symbol of the gratitude of the citizens of this state to all the men and women who are listed as missing in action, or who are or have been forcibly detained as a prisoner of war by our enemies. These persons have sacrificed and suffered much for their country while fighting for the cause of freedom.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this eleventh day of November in the year of our Lord two thousand and three and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.*

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**DIRK KEMPTHORNE  
GOVERNOR**

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**BEN YSURSA  
SECRETARY OF STATE**



**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-11**

**CONSOLIDATION OF PREPAREDNESS, RESPONSE, RECOVERY AND MITIGATION  
FUNCTIONS CURRENTLY VESTED IN THE DIVISION OF MILITARY, BUREAU  
OF HAZARDOUS MATERIALS AND BUREAU OF DISASTER SERVICES.**

**FORMATION OF A BUREAU OF HOMELAND SECURITY.**

**REPEALING AND REPLACING EXECUTIVE ORDER NO. 2003-10**

WHEREAS, widespread disaster resulting from floods, fire, storms, earthquakes, hazardous materials, tornados, landslides, mudslides, drought, explosions, riot, hostile military actions, the potential terrorist use of chemical, biological, radiological, nuclear and explosive Weapons of Mass Destruction, or other catastrophe is an ever present possibility in the State; and

WHEREAS, Chapter 10, Title 46, Idaho Code requires the protection of lives and property of the residents of the State in any type of natural or man-made disaster emergency or threat that might conceivably confront the state; and

WHEREAS, Chapter 71, Title 39, Idaho Code provides for the prompt response and containment of releases of hazardous materials; and

WHEREAS, the United States Government has taken steps to organize federal agencies to plan, train and respond to domestic and foreign terrorist attacks; and

WHEREAS, the United States Congress has appropriated funding to allow local, regional, state, and federal agencies to prepare for and respond to such crises; and

WHEREAS, centralized coordination and communication among preparedness and response entities at the local, state, regional, and federal levels are paramount to ensuring the safety of our citizens;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the powers and authority vested in me by the Constitution and laws of this State, and in accordance with the provisions of Chapter 10, Title 46 and Chapter 71, Title 39, Idaho Code do hereby direct:

1. That a Bureau of Homeland Security be formed in the Office of the Governor, Division of Military.
2. That the Bureau of Homeland Security shall manage the Bureau of Disaster Services and the Bureau of Hazardous Materials.
3. That the Office of Adjutant General act as Chief, Idaho Bureau of Homeland Security and appoint a director of the bureau in consultation with the Office of the Governor and who shall act as director of the Bureau of Disaster Services and the Bureau of Hazardous Materials.
4. That the Division of Military recommend to the Office of the Governor the necessary statutory changes to render permanent the contents of this executive order.



IN WITNESS WHEREOF, I have hereunto set my hand and Caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the fourteenth day of November, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred twenty seventh, and of the statehood of Idaho the one hundred thirteenth.

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DIRK KEMPTHORNE  
GOVERNOR

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BEN YSURSA  
SECRETARY OF STATE

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-12**

**ALLOTMENT MANAGEMENT PLANS  
IDAHO STATE DEPARTMENT OF AGRICULTURE AS LEAD AGENCY**

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*WHEREAS, Section 8 of the Public Rangelands Improvement Act of 1978 (P.L. 95-514; Stat. 1803) provide for, among other things, careful and considered consultation, cooperation, and coordination between the Forest Service, Bureau of Land Management, federal grazing permittees and lessees, and any state having lands within areas to be included in allotment management plans; and*

*WHEREAS, the Idaho State Department of Agriculture has signed Memoranda of Understanding (MOUs) with the U.S. Forest Service, the Bureau of Land Management, and the University of Idaho to coordinate and implement the congressional intent of the aforementioned act;*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me, under the Constitution and laws of the State of Idaho, do hereby designate the Idaho State Department of Agriculture to serve as the lead agency to consult, cooperate, and coordinate with the parties involved in matters relating to the development, implementation, and revision of allotment management plans; to provide a process for dispute resolution; and to receive and expend such monies as are available for these purposes. Further, I hereby direct all state agencies to cooperate fully with, and provide assistance to, the Idaho State Department of Agriculture in carrying out its responsibilities under this order.*

*This Executive Order shall cease to be effective four years after its entry into force.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this fourteenth day of November in the year of our Lord two thousand and three, and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.*

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**DIRK KEMPTHORNE  
GOVERNOR**

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**BEN YSURSA  
SECRETARY OF STATE**

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-13**

**AUTHORIZING THE RE-ESTABLISHMENT OF A STATE SCIENCE AND TECHNOLOGY ADVISORY COUNCIL AND THE RE-APPOINTMENT OF A SCIENCE AND TECHNOLOGY ADVISOR**

WHEREAS, Idaho has experienced a decade of rapid economic expansion led by growth in new technology industries; and

WHEREAS, the health and expansion of Idaho's future economy will depend on taking full advantage of research and technology; and

WHEREAS, Idaho has impressive resources for technology-based growth, internationally recognized university research programs, globally competitive technology companies, and the Idaho National Environmental Engineering Laboratory; and

WHEREAS, the State Science and Technology Advisory Council recommends the reappointment of a Science and Technology Advisor, re-establishment of a state Science and Technology Advisory Council, and the implementation of the State Science and Technology Strategic Plan;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state, do hereby re-establish the Science and Technology Advisory Council and the position of Science and Technology Advisor. The Council shall:

Advise the Idaho State Department of Commerce, the State Board of Education, Idaho's colleges and universities, and other state, local, federal and private sector agencies and organizations on science and technology interests and potentials;

Support the development and publishing of information on the conditions and importance of science and technology to the state's economy;

Assist with the implementation of the State Strategic Plan for Science and Technology; and

Assist with the coordination of local, state and federal interests to increase the positive economic impact of Idaho's science and technology resources.

The Science and Technology Advisor shall serve as Chairperson of the Council. The Council shall have regular meetings as determined by the Advisor and an Executive Committee of the Council. Members of the Council shall serve without compensation.

The Council shall be appointed by and serve at the pleasure of the Governor. The membership of the Council shall include individuals knowledgeable and experienced in science and technology issues. The Council shall also include representation from the Idaho State Department of Commerce, Office of the State Board of Education and the Office of the Governor. Representatives from the Idaho State Department of Commerce, the office of the State Board of Education and the Office of the Governor shall serve as the Executive Committee. The Council shall be staffed and supported by the Idaho State Department of Commerce.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this fourteenth day of November in the year of our Lord two thousand and three, and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.

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DIRK KEMPTHORNE  
GOVERNOR

\_\_\_\_\_  
BEN YSURSA  
SECRETARY OF STATE

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-14**

**AIR QUALITY IN THE TREASURE VALLEY**

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*WHEREAS, scientific data and discussion at a recent Governor's Conference on Air Quality in the Treasure Valley established that continued degradation of air quality in the Treasure Valley will jeopardize the health of our citizens, and could severely impact the economy and development of the region; and*

*WHEREAS, the State of Idaho can lead by example in the efforts to improve and protect air quality in the Treasure Valley; and*

*WHEREAS, exhaust emissions from motor vehicles are a source of air pollution in the Treasure Valley and, in performing their duties and servicing the residents of the State of Idaho, the executive agencies and employees of the State of Idaho own or lease a significant fleet of motor vehicles and operate other sources of air pollution.*

*NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order effective immediately that:*

- 1. In consultation with the Department of Environmental Quality, each executive department director shall:
  - a. Develop, adopt and implement a response plan to reduce air emissions from agency operations and employee commuting practices during times of elevated levels of air pollution in the Treasure Valley; and*
  - b. Adopt policies and practices which ensure that vehicles and other emissions sources purchased and operated by the agency and its employees in the Treasure Valley produce the least amount of emissions possible given the agency's operating, business and customer needs.**
- 2. Working with other agencies and the private sector, within six months from the date of this Executive Order, the Idaho Department of Water Resources, Energy Division shall develop an implementation strategy to assess and enhance the use of appropriate alternative fuel supplies as a means of air quality improvement and protection in the Treasure Valley.*
- 3. The Department of Administration shall:
  - a. Ensure that its policies and procedures facilitate and support the goals and objectives of this Executive Order; and*
  - b. Develop statewide contracts for low emission vehicles to be purchased by state agencies in the Treasure Valley.**
- 4. The faculty and researchers of the universities of the State of Idaho are encouraged to continue their efforts to better quantify and understand the sources, atmospheric dispersion and chemistry of air pollution in the Treasure Valley, and to improve the body of knowledge with regard to technical and management solutions available (or which can be made available) to address air quality issues in the Treasure Valley.*
- 5. Each executive department director or other appointing authority shall be responsible for ensuring that his or her agency is complying with the above directive.*
- 6. All Idaho businesses, governments and citizens are encouraged to participate in efforts consistent with this Executive Order.*
- 7. Annually, the Department of Environmental Quality shall review and report to the Office of the*

*Governor on the actions taken by the executive departments to comply with the directives, purpose and intent of this Executive Order.*

*This Executive Order shall cease to be effective four years after its entry into force.*



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this fourteenth day of November in the year of our Lord two thousand and three, and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.*

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*DIRK KEMPTHORNE*  
*GOVERNOR*

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*BEN YSURSA*  
*SECRETARY OF STATE*

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2003-15**

**AUTHORIZING THE TRANSFER OF FUNDS TO THE DISASTER EMERGENCY ACCOUNT**

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WHEREAS, in April of 2002, in Disaster Proclamation ID-2002-001 DIRK KEMPTHORNE, Governor of the State of Idaho declared a state of disaster emergency in Valley County, Idaho in accordance with Section 46-1008 of, Idaho Code; and

WHEREAS, tremendous financial obligations and expenses have been incurred by various departments, agencies, and Valley County in responding to and assisting in efforts to deal with the extreme peril to public safety, health, property and the environment; and

WHEREAS, all funds in the Disaster Emergency Account created by Section 46-1005A, Idaho Code have or soon will be expended; and

WHEREAS, funds in the General Fund are available to transfer to the Disaster Emergency Account under the requirements set forth in Section 46-1005A(2)(b) Idaho Code; and

WHEREAS, it is my judgment, as Governor of the State of Idaho, that any moneys transferred from the General Fund up to the limits provided below would not be required to support the current year's appropriation of these funds.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby order as follows:

1. The State Controller is directed to transfer moneys in the General Fund to the Disaster Emergency Account in such amount and at such times as directed by me or my designee, the Administrator of the Division of Financial Management. In no event shall more than one hundred twenty-five thousand dollars (\$125,000) be transferred from the General Fund to the Disaster Emergency Account during the current fiscal year.
2. In no event may the revenues made available under this Executive Order exceed, during any fiscal year, one percent (1%) of the annual appropriation of the General Account moneys for the fiscal year.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this twenty-fourth day of November in the year of our Lord two thousand and three, and of the Independence of the United States of America the two hundred twenty-seventh and of the Statehood of Idaho the one hundred thirteenth.

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DIRK KEMPTHORNE  
GOVERNOR

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BEN YSURSA  
SECRETARY OF STATE

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

DOCKET NO. 16-0411-0402

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

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(g), and 39-4601, Idaho Code.

**NEGOTIATED RULEMAKING MEETING:** A public negotiated rulemaking meeting will be held:

**Date:** Wednesday, April 28, 2004  
**Time:** 9:00 a.m. - 4:00 p.m.  
**Place:** Idaho Department of Health and Welfare  
Medicaid Central Office  
3232 Elder Street  
Conference Room D  
Boise, Idaho

**METHOD OF PARTICIPATION:** Persons wishing to participate in the informal negotiated rulemaking process may submit written comments and attend the negotiated rulemaking meeting.

**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:

The Department is electing to rewrite the chapter of rules governing Developmental Disabilities Agencies (DDAs) to increase the accountability, consistency and efficiency of these administrative rules, to align rules with plain language guidelines, to incorporate comments and recommendations from the public and Department staff to improve ease of use, to integrate the Intensive Behavioral Intervention (IBI) Interpretive Guidelines into rule, and to generally update, clarify, and reorganize the text of the chapter.

The goal of the negotiated rulemaking process is to develop by consensus the content of a recommended rule. If a consensus is reached, a draft of the rule, incorporating the consensus and any other appropriate information, recommendations, or materials, will be transmitted to the Department of Health and Welfare (DHW) for consideration and use in the formal rulemaking process. If a consensus is unable to be achieved on a particular issue(s), the negotiated rulemaking process may result in a report specifying those areas on which consensus was and was not reached, together with arguments for and against positions advocated by various participants. At the conclusion of the negotiated rulemaking process, DHW intends to continue this rulemaking with the publication of a proposed rule, using and taking into consideration the results of the negotiated rulemaking process. DHW intends to present the rule to the Board of Health and Welfare in November of 2004 for adoption of a pending rule by the 2005 Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS OBTAINING COPIES:** For assistance on technical questions concerning this negotiated rule, contact Mary Wells at (208) 364-1833 or Cameron Gilliland at (208) 334-5512.

Anyone may submit written comments regarding this proposed negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2004.

DATED this 3rd day of March, 2004.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor  
P.O. Box 83720 Boise, Idaho 83720-0036  
(208) 334-5564 phone  
(208) 332-7347 fax  
kovachs@idhw.state.id.us

## **IDAPA 57 - SEXUAL OFFENDER CLASSIFICATION BOARD**

### **57.01.01 - RULES GOVERNING THE SEXUAL OFFENDER CLASSIFICATION BOARD**

**DOCKET NO. 57-0101-0401**

**NOTICE OF RULEMAKING**

**VACATION OF PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency is vacating the proposed rulemaking previously initiated under this docket. The action is authorized pursuant to Section 18-8314, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a summary of the reasons for vacating this proposed rule:

The temporary rules that were adopted and published by the Board were not extended after review by the legislature during the 2004 legislative session and expired at the end of the session. Therefore, the proposed rules are being vacated so that amendments to the rule that better meet the legislative intent language can be made. New temporary rules will be adopted and proposed rulemaking will be initiated and published at a later date.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this vacation of rulemaking, contact Kathy Baird, Management Assistant, at (208) 658-2149.

DATED this 2nd day of March, 2004.

Kathy Baird, Management Assistant  
Sexual Offender Classification Board  
1299 N. Orchard St Suite 110  
Boise, ID 83706  
(208) 658-2149 phone; (208) 327-7102 fax



## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-0404

### NOTICE OF FINAL DECISION ON THE FALL CREEK (PALISADES SUBBASIN) TMDL

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Fall Creek Total Maximum Daily Load (TMDL).

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Fall Creek TMDL. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Fall Creek TMDL (Hydrologic Unit Code 17040104) addresses two (2) water body segments and three pollutants within the Fall Creek portion of the Palisades subbasin on Idaho's 1998 § 303(d) list. DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at [http://www.deq.state.id.us/water/tmdls/fall\\_creek/fall\\_creek\\_final.htm](http://www.deq.state.id.us/water/tmdls/fall_creek/fall_creek_final.htm) or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, [mbridges@deq.state.id.us](mailto:mbridges@deq.state.id.us).

Dated this 9th day of March, 2004.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[pwilson@deq.state.id.us](mailto:pwilson@deq.state.id.us)

## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS**

**DOCKET NO. 58-0102-0401**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**DESCRIPTIVE SUMMARY:** In November 2003 this rule was adopted by the Board as a temporary rule and is currently effective. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, January 7, 2004 Volume 04-1, pages 225 and 226. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

**IDAHO CODE, SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.state.id.us](http://www.deq.state.id.us).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning the proposed rulemaking, contact Don Essig at (208)373-0502 or [dessig@deq.state.id.us](mailto:dessig@deq.state.id.us).

Dated this 11th day of March, 2004.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[pwilson@deq.state.id.us](mailto:pwilson@deq.state.id.us)

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### **IDAPA 58, TITLE 01, CHAPTER 02**

#### **WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 04-1, January 7, 2004, pages 225 and 226.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2005 Idaho State Legislature as a final rule.**

## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE**

#### **DOCKET NO. 58-0105-0401**

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

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapters 44 and 58, Title 39, Idaho Code.

**MEETING SCHEDULE:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact Paula Wilson at [pwilson@deq.state.id.us](mailto:pwilson@deq.state.id.us), (208)373-0418.

**April 20, 2004, 10:00 a.m.**  
**Department of Environmental Quality**  
**Conference Room B**  
**1410 N. Hilton, Boise, Idaho**

**PRELIMINARY DRAFT:** A preliminary draft of the rule can be obtained at [www.state.id.us/deq/rules/58-0105-0401\\_negotiated\\_rulemaking.htm](http://www.state.id.us/deq/rules/58-0105-0401_negotiated_rulemaking.htm) or by contacting Paula Wilson at [pwilson@deq.state.id.us](mailto:pwilson@deq.state.id.us), (208)373-0418.

**DESCRIPTIVE SUMMARY:** The Rules and Standards for Hazardous Waste, IDAPA 58.01.05, incorporate by reference 40 CFR 124.19, which sets out the procedures for administrative hearings and appeals regarding hazardous waste permits. The Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, exclude Hazardous Waste Management Act (HWMA) permit appeals, which are governed instead by IDAPA 58.01.05.013 and 40 CFR 124.19. In May 2000 the Environmental Protection Agency revised 40 CFR 124.19. Those revisions caused the procedures for hearings and administrative appeals to be inconsistent with the procedures for contested cases set out in the Idaho Administrative Procedure Act (APA) by eliminating the opportunity for an evidentiary hearing and limiting appeals to record review. Recent case law from the Idaho Supreme Court has made it clear that agencies must afford persons the procedural protection of the APA contested case provisions which include the right to present evidence and examine witnesses where appropriate.

This rulemaking is being undertaken to remove the incorporation by reference of 40 CFR 124.19 so that the procedures regarding hazardous waste permits will be consistent with the Idaho APA. This rule change will streamline the procedures of the Department of Environmental Quality (DEQ) by eliminating the alternative procedures, making the rules and procedures for all permit appeals consistent within DEQ. Any citizen of the state of Idaho and/or regulated industry appealing a HWMA permit action of DEQ to the Board of Environmental Quality (Board) or having a direct and substantial interest in a proceeding filed with the Board may be interested in participating in this rulemaking.

With this rule change, it is necessary to revise the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, so that administrative procedures regarding HWMA permits are no longer excluded from the state administrative process.

The DEQ intends to conclude the negotiations by April 30, 2004. Upon conclusion of the negotiations, DEQ intends to present the rule to the Board for temporary adoption on May 20, 2004. If approved by the Board, DEQ intends to initiate proposed rulemaking by publishing the rule in the July 2004 issue of the Idaho Administrative Bulletin.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact John Brueck at [jbrueck@deq.state.id.us](mailto:jbrueck@deq.state.id.us),

(208)373-0458.

Anyone may submit written comments on the preliminary draft by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before April 30, 2004.

Dated this 16th day of March, 2004.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
pwilson@deq.state.id.us

## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY**

**DOCKET NO. 58-0123-0401**

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

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 67-5206, Idaho Code.

**MEETING SCHEDULE:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact Paula Wilson at [pwilson@deq.state.id.us](mailto:pwilson@deq.state.id.us), (208)373-0418.

**April 20, 2004, 10:00 a.m.**  
**Department of Environmental Quality**  
**Conference Room B**  
**1410 N. Hilton, Boise, Idaho**

**PRELIMINARY DRAFT:** A preliminary draft of the rule can be obtained at [www.state.id.us/deq/rules/58-0123-0401\\_negotiated\\_rulemaking.htm](http://www.state.id.us/deq/rules/58-0123-0401_negotiated_rulemaking.htm) or by contacting Paula Wilson at [pwilson@deq.state.id.us](mailto:pwilson@deq.state.id.us), (208)373-0418.

**DESCRIPTIVE SUMMARY:** The Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, exclude Hazardous Waste Management Act (HWMA) permit appeals, which are governed instead by Section 013 of the Rules and Standards for Hazardous Waste, IDAPA 58.01.05, and 40 CFR 124.19. In May 2000 the Environmental Protection Agency revised 40 CFR 124.19. Those revisions caused the procedures for hearings and administrative appeals to be inconsistent with the procedures for contested cases set out in the Idaho Administrative Procedure Act (APA) by eliminating the opportunity for an evidentiary hearing and limiting appeals to record review. Recent case law from the Idaho Supreme Court has made it clear that agencies must afford persons the procedural protection of the APA contested case provisions which include the right to present evidence and examine witnesses where appropriate.

This rulemaking is being undertaken to remove the exclusion of HWMA permit appeals from the definition of "contested case" so that those procedures will be consistent with the Idaho APA. This rule change will streamline the procedures of the Department of Environmental Quality (DEQ) by eliminating the alternative procedures, making the rules and procedures for all permit appeals consistent within DEQ. Any citizen of the state of Idaho and/or regulated industry appealing a HWMA permit action of DEQ to the Board of Environmental Quality (Board) or having a direct and substantial interest in a proceeding filed with the Board may be interested in participating in this rulemaking.

With this rule change, it is necessary to revise the Rules and Standards for Hazardous Waste, IDAPA 58.01.05, to remove the incorporation by reference of 40 CFR 124.19.

The DEQ intends to conclude the negotiations by April 30, 2004. Upon conclusion of the negotiations, DEQ intends to present the rule to the Board for temporary adoption on May 20, 2004. If approved by the Board, DEQ intends to initiate proposed rulemaking by publishing the rule in the July 2004 issue of the Idaho Administrative Bulletin.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact John Brueck at [jbrueck@deq.state.id.us](mailto:jbrueck@deq.state.id.us), (208)373-0458.

Anyone may submit written comments on the preliminary draft by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before April 30, 2004.

Dated this 16th day of March, 2004.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
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(208)373-0418/Fax No. (208)373-0481  
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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### **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.

**Because of the moratorium on proposed rulemaking during the legislative session, there are no proposed rules being promulgated or published in this month's Bulletin.**

Please refer to the Idaho Administrative Bulletin, **April 7, 2004, Volume 04-4** for notices and text of all rulemakings, 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) 332-1820 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 on purchases over \$50.

The Idaho Administrative Bulletin and Administrative Code are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**FOR THE ABOVE LINK TO WORK YOU HAVE  
TO BE CONNECTED TO THE INTERNET**

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

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