

IDAHO ADMINISTRATIVE BULLETIN

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March 2, 2005 -- Volume 05-3

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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 rule-making documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the 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 rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002; Bulletin 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. 03-2 refers to February 2003; 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.

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

NEGOTIATED RULEMAKING

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

PROPOSED RULEMAKING

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

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule. 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) protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit;*

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

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

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

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

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

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

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

FINAL RULEMAKING

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

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule 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 that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

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

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 83720-00306, telephone (208) 332-1820.

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

The Idaho Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes 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://www2.state.id.us/adm/adminrules/>

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.07.01.200.02.c.ii.

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

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

"**05.**" refers to Title 05, which is the Department of Administrations's Division of Purchasing

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

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

"**02.**" refers to Subsection 200.02.

"**c.**" refers to Subsection 200.02.c.

"**ii.**" refers to Subsection 200.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0401). 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. 38-0501-0401"

"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**).

"0401" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2004.

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

"(BREAK IN CONTINUITY OF SECTIONS)"

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

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

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

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

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

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the rule.

"01" denotes the Chapter number of the rule.

: "201" references the main Section number of the rule that the citation refers to.

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 38.04.041, "Rules Governing Capitol Mall Parking."

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2005

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
05-1	January 2005	*November 19, 2004	January 5, 2005	January 26, 2005
05-2	February 2005	January 5, 2005	February 2, 2005	February 23, 2005
05-3	March 2005	February 2, 2005	March 2, 2005	March 23, 2005
05-4	April 2005	March 2, 2005	April 6, 2005	April 27, 2005
05-5	May 2005	April 1, 2005	May 4, 2005	May 25, 2005
05-6	June 2005	May 4, 2005	June 1, 2005	June 21, 2005
05-7	July 2005	June 1, 2005	July 6, 2005	July 27, 2005
05-8	August 2005	July 1, 2005	August 3, 2005	August 24, 2005
05-9	September 2005	August 3, 2005	September 7, 2005	September 28, 2005
05-10	October 2005	**August 24, 2005	October 5, 2005	October 26, 2005
05-11	November 2005	October 5, 2005	November 2, 2005	November 23, 2005
05-12	December 2005	November 2, 2005	December 7, 2005	December 28, 2005

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2006

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
06-1	January 2006	*November 16, 2005	January 4, 2006	January 25, 2006
06-2	February 2006	January 4, 2006	February 1, 2006	February 22, 2006
06-3	March 2006	February 1, 2006	March 1, 2006	March 22, 2006
06-4	April 2006	March 1, 2006	April 5, 2006	April 26, 2006
06-5	May 2006	April 5, 2006	May 3, 2006	May 24, 2006
06-6	June 2006	May 3, 2006	June 7, 2006	June 28, 2006
06-7	July 2006	June 2, 2006	July 5, 2006	July 26, 2006
06-8	August 2006	June 30, 2006	August 2, 2006	August 23, 2006
06-9	September 2006	August 2, 2006	September 6, 2006	September 27, 2006
06-10	October 2006	**August 23, 2006	October 4, 2006	October 25, 2006
06-11	November 2006	October 4, 2006	November 1, 2006	November 22, 2006
06-12	December 2006	November 1, 2006	December 6, 2006	December 27, 2006

****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. 2004-11

**MEMORIALIZING THE SERVICE OF RICHARD W. JONES, ADMINISTRATOR
OF VETERANS SERVICES AND DEDICATING THE SECURE CARE UNIT
WITHIN THE IDAHO STATE VETERANS HOME LOCATED AT
320 COLLINS ROAD, IN THE CITY OF BOISE,
ADA COUNTY, IDAHO, IN HIS HONOR**

WHEREAS, Richard W. Jones as Administrator of Veterans Services has had a distinguished public service career with the State of Idaho; and

WHEREAS, he has been an unwavering advocate and leader for Idaho's veterans; and

WHEREAS, his steadfast leadership and commitment to Idaho veterans brought unity and direction to the Division of Veteran Services; and

WHEREAS, he oversaw the building of the Secure Care Unit in the Idaho State Veterans Home, the remodeling of the Idaho Veterans Home in Boise, the addition of the Activities Wing at the Pocatello Veterans Home, and the construction of the Idaho Veterans Cemetery; and

WHEREAS, his dedication to our state and veterans is worthy of lasting recognition and to preserve his place in Idaho's distinguished history;

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 that the Secure Care Unit of the Idaho State Veterans Home in the City of Boise be named in honor of Richard W. Jones and that a plaque commemorating his service to our state be placed therein.



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-third day of December in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred twenty-ninth and of the Statehood of Idaho the one hundred fifteenth.

**DIRK KEMPTHORNE
GOVERNOR**

**BEN YSURSA
SECRETARY OF STATE**

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2005-01

**ESTABLISHING A CRIMINAL JUSTICE COMMISSION FOR OVERSIGHT
OF THE STATE'S CRIMINAL JUSTICE SYSTEM**

WHEREAS, it is in the best interests of the citizens of the State of Idaho that government promote efficiency and effectiveness of the criminal justice system and, where possible, encourage dialogue among the respective branches of government to achieve this effectiveness and efficiency; and

WHEREAS, combating crime and protecting citizens from criminal depredation is of vital concern to government; and

WHEREAS, communication and cooperation among the various facets of the community of criminal justice professionals is of utmost importance in promoting efficiency and effectiveness; and

WHEREAS, providing policy makers and criminal justice decision makers with accurate information results in better decisions which improves public safety and results in the efficient use of public resources; and

WHEREAS, the continued growth of the State's adult incarcerated offender population necessitates more in-depth analysis of the State's criminal justice system; and

WHEREAS, gang violence and the manufacturing, trafficking and abuse of methamphetamine are critical issues that plague communities across the state and are a drain on state and local resources; and

WHEREAS, Idaho's current criminal justice efforts and initiatives require clear strategic planning and increased coordination;

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 establish the Idaho Criminal Justice Commission.

- 1. The Idaho Criminal Justice Commission (the "Commission") shall consist of 20 members. The Commission's membership shall be as follows:*
 - a. A representative from the Governor's Office;*
 - b. The Attorney General or his or her designee;*
 - c. The Chair of the Senate Judiciary and Rules Committee;*
 - d. The Chair of the House Judiciary, Rules and Administration Committee;*
 - e. The Director of the Idaho Department of Correction;*
 - f. The Director of the Idaho State Police;*
 - g. The Director of the Idaho Department of Juvenile Corrections;*
 - h. The Executive Director of the Idaho Commission of Pardons and Parole;*
 - i. The Director of the Idaho Department of Health and Welfare;*

- j. Four (4) representatives of the judiciary as designated by the Chief Justice, including a Supreme Court Justice, Court of Appeals Judge, District Judge and Magistrate Judge;*
 - k. One (1) representative from the Idaho Prosecuting Attorneys Association;*
 - l. One (1) representative from the Office of the Idaho State Appellate Public Defender;*
 - m. One (1) representative from the Idaho Sheriffs' Association;*
 - n. One (1) representative from the Idaho Chiefs of Police Association;*
 - o. Three (3) citizens-at-large*
- 2. The purpose of the Commission shall be to provide policy-level direction and to promote efficient and effective use of resources for matters related to the State's criminal justice system. To that end it shall:*
- a. Identify critical problems within the criminal justice system and recommend strategies to solve these problems;*
 - i. Areas to be addressed include, but are not limited to:*
 - 1. Continued growth in the adult incarcerated offender population;*
 - 2. The manufacturing, trafficking and abuse of methamphetamine;*
 - 3. Gang violence;*
 - b. Advise and develop recommendations for the Governor and the Legislature, when appropriate, on public policy and strategies to improve the State's criminal justice system;*
 - c. Review and evaluate criminal justice policies and proposed legislation to determine impact on the State's adult and juvenile justice systems;*
 - d. Promote communication among criminal justice professionals and the respective branches of state government to improve professionalism, create partnerships, and to improve cooperation and coordination at all levels of the criminal justice system.*
 - e. Research best practices of other states;*
 - f. Analyze the long-range needs of the criminal justice system, including an assessment of the cost-effectiveness of the use of state and local funds in the criminal justice system;*
 - g. Partner with Idaho's college and universities to conduct research, planning and analysis activities, including studies that analyze a variety of crime trends and criminal justice issues.*
- 3. The Criminal Justice Commission members shall be appointed and serve at the pleasure of the Governor.*
- 4. The Commission members shall serve a term of 4 years, with the only exception being the inaugural membership being appointed to serve staggering two (2), three (3) and four (4) year terms.*
- 5. The Chair of the Commission shall be appointed annually by the Governor. A Vice-Chair shall be selected annually by the members of the Commission. The term of office for the Chair and Vice-Chair shall be one year. The Chair and Vice-Chair may succeed themselves if approved by the Governor.*
- 6. The Criminal Justice Commission shall receive administrative staff support from the state agencies represented on the Commission.*

7. *The Criminal Justice Commission will meet no less than four times annually.*
8. *The Criminal Justice Commission may appoint sub-committees consistent with the needs of the Commission to pertinent issues that merit more in-depth consideration.*
9. *Commission members will serve without compensation or reimbursement for expenses, including related travel and per diem to attend Commission meetings.*

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 10th day of January in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred twenty-ninth and of the Statehood of Idaho the one hundred fifteenth

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2005-02

**AUTHORIZING THE ESTABLISHMENT OF THE IDAHO MOTORCYCLE
SAFETY ADVISORY COUNCIL**

WHEREAS, Idaho has experienced a nearly thirty-five percent (35%) increase in total traffic volume on Idaho's highways between 1992 and 2003; and

WHEREAS, Idaho has experienced a twenty-seven percent (27%) increase in motorcycle registrations between 1992 and 2003; and

WHEREAS, Idaho has experienced 4,396 motorcycle collisions and 180 motorcycle related fatalities between 1992 and 2003; and

WHEREAS, the Office of the Governor, the Idaho STAR Motorcycle Advisory Committee, the Idaho Transportation Department, the Idaho State Police and representatives from the Idaho Coalition for Motorcycle Safety, Idaho Harley Owners Group, Gold Wing Road Riders Association, and BMW Motorcycle Owners Association perceive a need to improve motorcycle rider safety and reduce the number of motorcycle collisions and fatalities through improvements in design, construction and maintenance standards for Idaho's roadways; and

WHEREAS, expertise exists within the state that includes individuals knowledgeable and experienced in the issues of motorcycle safety and roadway operations;

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 that:

- 1. The Idaho Motorcycle Safety Advisory Council is established. The Council shall:
 - a. Identify motorcycle safety issues related to the physical characteristics of Idaho's roadways; and*
 - b. Research potential solutions to the identified motorcycle safety issues and determine their associated costs; and*
 - c. Develop recommendations from the potential solutions and report those recommendations to the Governor and to the Idaho Transportation Board at least once each year.**
- 2. The Council's membership shall be as follows:
 - a. One (1) representative from the Idaho Transportation Department;*
 - b. One (1) representative from the Idaho State Police;*
 - c. One (1) representative of the Idaho STAR Advisory Committee;*
 - d. One (1) representative from the Idaho Coalition for Motorcycle Safety;*
 - e. One (1) representative from the Idaho Harley Owners Group;*
 - f. One (1) representative from the Gold Wing Road Riders Association;*
 - g. One (1) representative from the BMW Motorcycle Owners Association;**

- h. One (1) representative from the Local Highway Technical Assistance Council.*
- 3. Council members shall serve a term of 4 years, with the exception of the inaugural membership being appointed to serve staggering two (2), three (3) and four (4) year terms.*
 - 4. Council members shall be nominated by the organizations they represent and approved by the Governor.*
 - 5. The Council may recommend additional members to the Governor as they deem appropriate and may establish subcommittees consistent with the needs of the Council.*
 - 6. The Council members shall elect a Chairperson and Vice-Chairperson from among their members.*
 - 7. The Council shall meet at least four (4) times per year as determined by the Chair and Vice-Chair.*
 - 8. The Council members will serve without compensation or reimbursement for expenses, including related travel and per diem to attend council meetings.*
 - 9. The Council shall receive administrative and technical staff support from the Idaho Transportation Department.*



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 14th day of January in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred twenty-ninth and of the Statehood of Idaho the one hundred fifteenth.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2005-03

**CONTINUATION OF THE IDAHO COUNCIL FOR PURCHASES FROM PEOPLE WITH SEVERE
DISABILITIES REPEALING AND REPLACING EXECUTIVE ORDER NO. 2000-11**

WHEREAS, it is in the public interest to promote employment opportunities for people with severe disabilities; and

WHEREAS, the private non-profit community rehabilitation programs of Idaho strive to provide employment opportunities for people with severe disabilities; and

WHEREAS, the Idaho Code provides for the purchase by the agencies of the State of Idaho of goods and services that are produced by people with severe disabilities participating in private non-profit community rehabilitation programs in Idaho;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuation of the Idaho Council for Purchases from People with Severe Disabilities, as follows:

1) The Council's responsibilities will be:

- ◆ To promote the purchase by state agencies of goods and services produced by people with severe disabilities in private non-profit community rehabilitation programs under the auspices of Section 67-2319, Idaho Code;
- ◆ To conduct monitoring and study the implementation of the purchasing program authorized by said Section 67-2319;
- ◆ To designate a central non-profit organization to coordinate the participation of private non-profit community rehabilitation programs in the Idaho purchasing program and develop procedures for such participation;
- ◆ To advise the Division of Purchasing on the development and operation of a program to purchase products and services from people with severe disabilities in private non-profit community rehabilitation programs; and
- ◆ To provide an annual report of activities, products, services, employment opportunities, and other benefits derived from this program.

2) The Governor shall appoint members of the Council comprised of a representative from a private non-profit community rehabilitation program, the Division of Purchasing, the private sector, a labor organization, the Division of Vocational Rehabilitation, and at least one other State Agency. Each member of the Council shall serve for a term of 3 years. Members of the council shall select a chair from among their number.

3) The Council shall be administratively supported by the Division of Vocational Rehabilitation.



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 1st day of February in the year of our Lord two-thousand five and of the Independence of the United States of America the two hundred twenty ninth and of the Statehood of Idaho the one hundred fifteenth.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2005-04

**RENEWING THE CERTIFIED PUBLIC MANAGER PROGRAM REPEALING AND REPLACING
EXECUTIVE ORDER NO. 2000-18**

WHEREAS, the State of Idaho recognizes the value of investing in its human resources; and,

WHEREAS, the government agencies of Idaho have identified as critical the need for management development initiatives and to support and provide for successful workforce planning; and,

WHEREAS, management development should be viewed as an integral tool to improve productivity and service delivery to the citizens of Idaho; and,

WHEREAS, Idaho government agencies will benefit from the application of a comprehensive set of management principles and best practices; and

WHEREAS, the State of Idaho's leadership has placed a priority on the use of management knowledge and skills; and,

WHEREAS, the Division of Human Resources and the Center for Public Policy and Administration at Boise State University will develop and use a nationally recognized management development curriculum; and,

WHEREAS, the Certified Public Manager program is an accepted standard and has proven its value in a significant number of states,

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 renew the:

CERTIFIED PUBLIC MANAGER PROGRAM

as a preferred management development program for the State of Idaho and, thereby, actively encourage the participation of state agencies in the development of government managers to enhance the quality and productivity of services delivered to the citizens of Idaho.

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 1st day of February in the year of our Lord two thousand five and of the Independence of the United States of America the two hundred twenty-ninth and of the Statehood of Idaho the one hundred fifteenth.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE
AGED BLIND AND DISABLED (AABD)**

DOCKET NO. 16-0305-0501

NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 1, 2005.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Section 56-202, Idaho Code.

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

This rule change will provide more opportunity for people with disabilities who want to work to be able to do so without losing their Medicaid benefits. People with disabilities who have jobs are more self-sufficient in the long-term and may rely less on government services. This rule change is a Federal work incentive authorized under Section 1905(q) of the Social Security Act.

This temporary rule adds language that will allow continued Medicaid coverage to individuals with disabilities who received Medicaid and AABD state cash assistance before they began employment or increased their level of earnings. The rule change will allow these individuals to continue to receive Medicaid after they have received an increase in earnings that would cause them to lose Medicaid benefits under the current rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it confers a benefit to certain Medicaid recipients.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary rule, contact Linda Palmer at (208) 334-5815.

DATED this 1st day of February, 2005.

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 e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0501

782. ~~PARTICIPANT ENTITLED TO MEDICAID BENEFITS UNDER SECTION 1619(b) SSI ELIGIBILITY STATUS OF THE SOCIAL SECURITY ACT.~~

A participant is eligible for Medicaid as a blind or disabled SSI recipient, if SSA is evaluating him for, or has granted him, SSI eligibility status under Section 1619b of the Social Security Act, for as long as his 1619b status continues. A participant may be eligible for Medicaid under Section 1619(b) of the Social Security Act either under federal or state

criteria, depending on his circumstances.

~~(7-1-99)~~(4-1-05)T

01. Federally Qualified Under SSA Section 1619(b). An SSI recipient with a disability, previously eligible for SSI cash, who, because of earnings from employment, no longer meets the financial eligibility requirements for SSI cash, is eligible for Medicaid. SSA determines the qualification for eligibility under Section 1619(b). (4-1-05)T

02. State-Only Qualified Under SSA Section 1619(b). An AABD cash participant with a disability, who, because of earnings from employment, no longer meets the financial eligibility requirements for AABD cash, may be eligible for Medicaid. The Department determines eligibility for State-only Section 1619(b) Medicaid. State-only Section 1619(b) Medicaid is authorized under Section 1905(q) of the Social Security Act. (4-1-05)T

a. Eligibility Requirements. A participant must meet all of the following requirements to be eligible for State-only 1619(b) Medicaid: (4-1-05)T

i. The participant received AABD cash in the month prior to the first month of his eligibility under this Section of rule. (4-1-05)T

ii. The participant is under age sixty-five (65). (4-1-05)T

iii. The participant continues to have a disability. (4-1-05)T

iv. The participant must depend on Medicaid coverage to continue working. An individual depends on Medicaid coverage if he: (4-1-05)T

(1) Used Medicaid coverage within the past twelve (12) months; or (4-1-05)T

(2) Expects to use Medicaid coverage in the next twelve (12) months; or (4-1-05)T

(3) Would be unable to pay unexpected medical bills in the next twelve (12) months without Medicaid coverage. (4-1-05)T

v. The participant is not able to afford medical insurance equivalent to Medicaid, including attendant care. The participant meets this requirement if his earnings are under the limit referred to in Subsection 782.02.a.vii. of this rule. (4-1-05)T

vi. The participant continues to meet all of the non-disability eligibility requirements in these rules. (4-1-05)T

vii. The participant's annual gross earned income is less than the current calendar year's charted threshold for Idaho as developed by SSA for federal qualification for Section 1619(b) Medicaid. The charted threshold for Idaho is found at: <http://policy.ssa.gov/poms.nsf/lnx/0502302200>. (4-1-05)T

b. Ending State-Only 1619(b) Medicaid. State-only Section 1619(b) Medicaid ends when the participant meets one (1) of the following criteria: (4-1-05)T

i. The participant is no longer eligible for AABD cash for a reason other than excess earned income; (4-1-05)T

ii. The participant's gross earned income is equal to or more than the current calendar year's annual earnings threshold for Idaho developed by the Social Security Administration for Federal Section 1619(b) Medicaid; (4-1-05)T

iii. The participant is age sixty-five (65) or older; or (4-1-05)T

iv. The participant regains eligibility for AABD cash. (4-1-05)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-0501

NOTICE OF FINAL DECISION ON THE KING HILL-C.J. STRIKE TOTAL MAXIMUM DAILY LOAD (TMDL)

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

DESCRIPTIVE SUMMARY: The following is a concise statement regarding this final decision:

The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the King Hill-C.J. Strike 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 King Hill-C.J. Strike TMDL (Hydrologic Unit Code 17050101) addresses ten (10) streams and their associated assessment units within the Snake River subbasin on Idaho's 1998 Section 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.idaho.gov/water/data_reports/surface_water/tmdls/snake_river_kinghill_cjstrike/snake_river_kinghill_cjstrike.cfm or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, mbridges@deq.idaho.gov.

DATED this 7th day of February, 2005.

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.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-0502

**NOTICE OF FINAL DECISION ON THE PALOUSE RIVER TRIBUTARIES
TOTAL MAXIMUM DAILY LOAD (TMDL)**

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

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Palouse River Tributaries 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 Palouse River Tributaries TMDL (Hydrologic Unit Code 17060108, Clearwater River subbasin) addresses six (6) streams and their associated assessment units within the Clearwater subbasin on Idaho's 1998 Section 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.idaho.gov/water/data_reports/surface_water/tmdls/palouse_river_tribs/palouse_river_tribs.cfm or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, mbridges@deq.idaho.gov.

DATED this 8th day of February, 2005.

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.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0501

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1) and 67-5220(2), 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 and 39-107, Idaho Code.

HEARING SCHEDULE: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. Additional meetings will be scheduled as necessary. For information regarding additional meetings, contact Phyllis Heitman at (208) 373-0256 or pheitman@deq.idaho.gov.

March 9, 2005, 9:00 a.m. to Noon
Department of Environmental Quality, Conference Room B
1410 N. Hilton, Boise, Idaho

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) proposes to review sections of IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho" (Rules) that pertain to sources of air pollution that are currently deferred from the Title V permitting program as defined in IDAPA 58.01.01.301.02.b.iv.

Currently IDAPA 58.01.01.313.01.e.i. states that deferred sources are required to submit a Tier I operating permit application no later than June 1, 2005. DEQ anticipated that the Environmental Protection Agency (EPA), by December 2004, would have decided whether to require the deferred sources to submit an application. To date, EPA has not issued a decision.

DEQ has initiated this negotiated rulemaking to review the June 1, 2005 deadline to determine if the deadline should be extended to allow EPA to issue a decision, or if DEQ should simply exempt the deferred sources from the requirement to obtain a Tier I operating permit with the understanding that EPA may decide differently, whereupon DEQ may then need to revise the rule again.

The text of the rule will be developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Both major and minor sources of air emissions may be interested in participating in this rulemaking. Special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho may also wish to participate in this rulemaking.

Upon conclusion of the negotiations, DEQ intends to present the rule to the Board for temporary adoption in May 2005. If approved by the Board, DEQ intends to initiate proposed rulemaking by publishing the rule in the July 2005 issue of the Idaho Administrative Bulletin.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the negotiated rulemaking, contact Mike Simon at (208)373-0212, msimon@deq.idaho.gov.

Dated this 28th day of February, 2005.

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.idaho.gov

Subjects Affected Index

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - Rules Governing Eligibility for Aid to the Aged Blind and Disabled (AABD)

Docket No. 16-0305-0501

782. Medicaid Benefits Under Section 1619(b) Of The Social Security Act..... 20

LEGAL NOTICE

Summary of Proposed Rulemakings

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

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the 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, **March 2, 2005, Volume 05-3** 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.

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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