**IDAHO ADMINISTRATIVE BULLETIN**

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*February 6, 2019 – Volume 19-2*

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PREFACE

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, that is published pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all official rulemaking notices, official rule text, executive orders of the Governor, and all legislative documents affecting rules that are statutorily required to be published in the Bulletin. It may also include other rules-related documents an agency may want to make public through the Bulletin.

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties may submit written comments to the agency or request public hearings of the agency, if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual “Notice of Rulemaking - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is identified by the calendar year and issue number. For example, Bulletin 13-1 refers to the first Bulletin issued in calendar year 2013; Bulletin 14-1 refers to the first Bulletin issued in calendar year 2014. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 13-1 refers to January 2013; Volume No. 13-2 refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume 14-1. The December 2015 Bulletin is cited as Volume 15-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The Idaho Administrative Code is an electronic-only, online compilation of all final and enforceable administrative rules of the state of Idaho that are of full force and effect. Any temporary rule that is adopted by an agency and is of force and effect is codified into the Administrative Code upon becoming effective. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code until approved as final.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, refer to the Cumulative Rulemaking Index. Link to it on the Administrative Rules homepage at adminrules.idaho.gov.

THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho’s administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. 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 must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. 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 rule.
1. NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so. The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

2. 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 Rulemaking - Proposed Rule” in the Bulletin. This notice must include very specific information regarding the rulemaking including all relevant state or federal statutory authority occasioning the rulemaking, a non-technical description of the changes being made, any associated costs, guidance on how to participate through submission of written comments and requests for public hearings, and the text of the proposed rule in legislative format.

3. 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 one or more of these criteria, and with the Governor’s approval, the agency may adopt and make a temporary rule effective prior to receiving legislative authorization and without allowing for any public input. The law allows an agency to make a temporary rule immediately effective upon adoption. A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

4. 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 Rulemaking - Pending Rule.” This includes a statement giving the reasons for adopting the rule, a statement regarding when the rule becomes effective, a description of how it differs from the proposed rule, and identification of any fees being imposed or changed.

Agencies are required to republish the text of the pending 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.

5. FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is of full force and effect.
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 schematic. 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 that are further subdivided into subsections. An example IDAPA number is as follows:

**IDAPA 38.05.01.200.02.c.ii.**

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

1. “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”

   “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. Each rulemaking that is filed with the Coordinator is assigned a “DOCKET NUMBER.” The docket number is a series of numbers separated by a hyphen “-“. (38-0501-1401). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

**“DOCKET NO. 38-0501-1401”**

“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).

“1401” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as “1402”. The docket number in this scenario would be 38-0501-1402.

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

**Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.
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WHEREAS, then acting Governor Brad Little issued Executive Order No. 2017-06, the Licensing Freedom Act, on May 19, 2017 (“Licensing Freedom Act of 2017”); and

WHEREAS, the Licensing Freedom Act of 2017 initiated an unprecedented effort by executive branch agencies to systematically review applicable professional and occupational licensing laws and solicit feedback from the public. The Licensing Freedom Act was the first comprehensive review of occupational licensure in the state in more than 40 years; and

WHEREAS, under the Licensing Freedom Act of 2017, each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including each division, bureau or self-governing agency with statutory or regulatory authority to issue a license to an individual, authorizing such person to engage in a profession, vocation or occupation, was required to submit certain information to then Lieutenant Governor Little, no later than July 1, 2018, which included the following information: The timeframe in which a license is either granted or denied; Prerequisites for a license; Renewal requirements; Requirements for accepting or denying an application and license renewal; Qualifications for suspension, revocation, or other disciplinary action; The cost to apply for an application or renewal of a license; The cost for administering the licensing and renewal process; and

WHEREAS, then Lt. Governor Brad Little issued a report compiling the reports from each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including each division, bureau or self-governing agency with statutory or regulatory authority to issue a license to an individual, authorizing such person to engage in a profession, vocation or occupation, summarizing the findings, and providing a comprehensive snapshot of the scope of occupational licensure in Idaho; and

WHEREAS, the Licensing Freedom Act of 2017 report found at least 442 different occupational license types, with at least 204,000 licensees in Idaho, administered by 13 executive branch agencies and 47 boards and commissions; and

WHEREAS, in reporting back to the Lt. Governor Little, agencies made 241 total recommendations for improvement, modification, or elimination of licensing requirements or other regulatory burdens; and

WHEREAS, the Licensing Freedom Act of 2017 report identified 20 universal recommendations, aimed at identifying recommendations for improvement, modification, and/or elimination of licensing requirements or other regulatory burdens, while still ensuring public protection; and

WHEREAS, the top two recommendations from the Licensing Freedom Act Report concerned establishing a sunrise review process for new proposed licenses and a sunset review process for existing licenses.

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order that:

1. Sunset of professional regulations. Each year, no later than March 31, the Administrator of the Division of Financial Management shall recommend to the Governor the review of no fewer than five (5) professions, vocations or occupations that are licensed by any executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including any division, bureau or self-governing agency, for the purpose of determining whether the continuation of those regulatory programs is in the public interest. Upon approval by the Governor of the requested reviews, the Division of Financial Management shall conduct such reviews as are determined by the Administrator to be appropriate. The Administrator shall report the findings of the Division of Financial Management’s
review to the Governor on or before September 30 of each year. This process shall result in the review of the licensure of each profession, occupation, or vocation at least once every four (4) years.

2. Sunrise restrictions on professional regulations. In evaluating proposals to regulate a business, profession or occupation, or to modify the regulation of a business, profession or occupation, the Governor and each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including each division, bureau or self-governing agency, shall work with the Legislature to consider the following factors:

   a. Whether the unregulated business or practice of the profession or occupation will substantially harm or endanger the public health, safety or welfare and whether the potential for harm is recognizable, quantifiable and not remote; and

   b. Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily available and measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability; and

   c. Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to continue to practice or to find employment; and

   d. Whether the public is or can be effectively protected by other less restrictive means; and

   e. Whether and how the occupation or profession is licensed in other states and the compatibility of the proposed regulation in Idaho with the reciprocity rules of other states; and

   f. Whether the proposed regulation considers and addresses the unique needs of military personnel, spouses, and veterans who are members of the occupation or profession addressed; and

   g. Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the direct and indirect costs to consumers, will be outweighed by the benefits of regulation; and

   h. Whether the proposed regulation is the least restrictive effective regulatory framework capable of adequately protecting the public.

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 31st day of January, in the year of our Lord two thousand and nineteen.

BRAD LITTLE
GOVERNOR

LAVERENCE DENNEY
SECRETARY OF STATE
WHEREAS, Idaho’s strong economic growth is vital to ensuring our citizens and our children are able to find
great jobs and raise their families in Idaho; and

WHEREAS, excessive regulation at all levels of government can impose high costs on businesses, inhibit job
growth, and impede private sector investment; and

WHEREAS, burdensome regulations continue to be a hardship for many small business owners; and

WHEREAS, Idaho’s Administrative Code has grown to 736 chapters, totaling more than 8,200 pages, and
containing more than 72,000 restrictions.

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the
Constitution and laws of this state, do hereby order that:

1. Each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code,
including each division, bureau or self-governing agency that has the authority to issue
administrative rules shall designate an existing employee of the agency as its Rules Review Officer
(RRO) to undertake a critical and comprehensive review of the agency’s administrative rules to
identify costly, ineffective, or outdated regulations.

   a. Agencies must submit the name and contact information of the RRO to the
      Division of Financial Management no later than March 1, 2019.

2. Through the end of fiscal year 2021, prior to proposing a new rule for publication in the Idaho
   Administrative Bulletin, each executive department of the state of Idaho as set forth in section 67-2402,
   Idaho Code, including each division, bureau or self-governing agency, shall submit to the Division of
   Financial Management:

   a. A business/competitiveness impact statement that identifies the impact the proposed rule
      will have on individuals and small businesses; and

   b. At least two existing rules to be repealed or significantly simplified, or a statement
      clearly and thoroughly stating why existing rules cannot be simplified or eliminated.

3. The Division of Financial Management shall produce an annual report to the Governor’s office
    outlining the progress made in eliminating burdensome regulations and streamlining state government.

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 21st day of January, in the year of our
Lord two thousand and nineteen.

BRAD LITTLE, GOVERNOR

LAWERENCE DENNEY, SECRETARY OF STATE
IDAPA 13 – IDAHO FISH AND GAME COMMISSION
13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO
DOCKET NO. 13-0108-1901P
NOTICE OF PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency has adopted by proclamation the 2019-2020 Moose, Bighorn Sheep and Mountain Goat Seasons, establishing seasons and limits for hunting in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation, contact Owen Moroney at 208-334-3715.
EFFECTIVE DATE: The effective date of the temporary rule is January 4, 2019.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

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

**Rule 645 – Water’s Edge: Treatment Of Dividends**

This change is to avoid taxing repatriated dividend income that had previously been included in Idaho apportionable income in a prior tax year and to provide clarification on Idaho’s treatment of Global Intangible Low-Tax Income (GILTI).

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Conferring a benefit.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Cynthia Adrian (208) 334-7670.

Dated this 4th day of January, 2019.

Cynthia Adrian, Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670
Cynthia.Adrian@tax.idaho.gov

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 35-0101-1901
(Only Those Sections With Amendments Are Shown.)
645. WATER’S EDGE: TREATMENT OF DIVIDENDS (RULE 645).
Section 63-3027C, Idaho Code

01. Dividends Received from Payors Incorporated Outside the United States. (1-4-19)T

a. Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as business income. These dividends are treated as business income of the water’s edge combined group even if paid from earnings included in the taxpayer’s combined report in prior years. (3-20-97) (1-4-19)T

b. As provided in Section 63-3027C(e)(1), Idaho Code, amounts included in income under sections 951 and 951A of the Internal Revenue Code are treated as dividends from payors outside the fifty (50) states and District of Columbia. (1-4-19)T

c. In order to avoid taxing income that had previously been included in Idaho apportionable income in a prior tax year, the remaining portion of the dividend that was not excluded from Idaho apportionable income under Section 63-3027C(3), Idaho Code, is excluded from Idaho apportionable income if the taxpayer can prove that the income was previously included in Idaho apportionable income in a prior tax year. (1-4-19)T

02. Dividends Received from Payors Incorporated in the United States. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be business income of the water’s edge combined group. (3-20-97)

03. Deemed Dividends from Possession Corporations. The income of a possession corporation, excluded in Section 63-3027B(c), Idaho Code, shall be included in business income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income greater than zero (0). Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. (4-5-00)

04. Dividends from Foreign Sales Corporations. (4-5-00)

a. As provided in Section 63-3027C(d)(1), Idaho Code, dividends received from a Foreign Sales Corporation (FSC) shall be eliminated in the proportion that FSC federal taxable income for the year during which the dividend was paid bears to the total FSC income before taxes for that year. For purposes of computing the dividend elimination, total FSC income before taxes means book income before the deduction of federal income taxes. (4-5-00)

b. For example, a FSC paid one million dollars ($1,000,000) in dividends during the taxable year. For that same taxable year, the FSC had federal taxable income totaling ten million dollars ($10,000,000) and total FSC income before taxes of twenty million dollars ($20,000,000). The dividends eliminated would be five hundred thousand dollars ($500,000) computed as follows: (($10,000,000 federal taxable income / $20,000,000 total FSC income before taxes) X $1,000,000 FSC dividend paid = $500,000 dividend elimination). (4-5-00)

05. Interest Expense Offset. The interest expense offset provided in Section 63-3022M, Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. (4-5-00)
Sections Affected Index

_IDAPA 35 – IDAHO STATE TAX COMMISSION_
35.01.01 – Income Tax Administrative Rules
_Docket No. 35-0101-1901_

645. Water’s Edge: Treatment Of Dividends (Rule 645) ........................................................................................................ 16
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PUBLIC NOTICE OF INTENT
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NEW OR CHANGED AGENCY RULES

THERE ARE NO PROPOSED RULES PUBLISHED
IN THE FEBRUARY 6, 2019, IDAHO ADMINISTRATIVE BULLETIN, VOL. 19-2.

Please refer to the Idaho Administrative Bulletin, February 6, 2019, Volume 19-2, for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at adminrules.idaho.gov.

Office of the Administrative Rules Coordinator, Dept. of Administration, P.O. Box 83720, Boise, ID 83720-0306
Phone: 208-332-1820; Email: rulescoordinator@adm.idaho.gov
CUMULATIVE RULEMAKING INDEX
OF IDAHO ADMINISTRATIVE RULES

Office of the Administrative Rules Coordinator
Idaho Department of Administration

July 1, 1993 – Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

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Idaho Department of Administration

March 28, 2018 – February 6, 2019

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(ef. date)L – Denotes Adoption by Legislative Action
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