# IDAHO ADMINISTRATIVE BULLETIN

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*April 3, 2019 – Vol. 19-4*

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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
b) 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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<th>Monthly Issue of Bulletin</th>
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<th>Publication Date</th>
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<td>January 2018</td>
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<td>January 24, 2018</td>
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<td>18-11</td>
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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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<td>IDAPA 42</td>
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EFFECTIVE DATE: The effective date of the temporary rule is March 14, 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 Section 67-2901, Idaho Code.

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

This temporary rule lowers the minimum age for detention officer applicants from 21 to 18 years of age.

Detention facilities are required to maintain minimum staffing levels and are currently facing challenges meeting the staffing levels. As a result, patrol officers must be reassigned from patrol duties to detention duties. This shift of duties creates a greater risk to the community due to the decrease in law enforcement presence. This temporary rule is immediately necessary to increase the pool of potential recruits.

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

This temporary rule is necessary to protect the public health, safety, or welfare of the citizens of Idaho.

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:

Not applicable

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Amy Jordan, (208) 884-7100.

Dated this 18th day of March, 2019.

Colonel Kedrick R. Wills, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
Phone: (208) 884-7003
Fax: (208) 884-7290
THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 11-1101-1901
(Only Those Sections With Amendments Are Shown.)

053. AGE.
Applicants for POST certification must meet the following minimum age requirements at the time of application for each respective discipline:

a. Patrol Officer applicants must be twenty-one (21) years of age. (3-15-18)

b. Detention Officer applicants must be twenty-one (21) years of age. (3-15-18)

c. Correction Officer applicants must be eighteen (18) years of age. (3-15-18)

d. Felony Probation and Parole Officer applicants must be twenty-one (21) years of age. (3-15-18)

e. Misdemeanor Probation Officer applicants must be twenty-one (21) years of age. (3-15-18)

f. Juvenile Detention Officer applicants must be twenty-one (21) years of age. (3-15-18)

g. Juvenile Probation Officer applicants must be twenty-one (21) years of age. (3-15-18)

h. Juvenile Corrections Direct Care Staff applicants must be twenty-one (21) years of age. (3-15-18)

i. Communications Officer applicants must be eighteen (18) years of age. (3-15-18)
AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency has adopted by proclamation the 2019 and 2020 Idaho Big Game Seasons, establishing seasons and limits for taking of big game in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation, contact Owen Moroney at (208) 334-3715.
AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency has adopted by proclamation the 2019 Idaho Spring Chinook Seasons, establishing seasons and limits for fishing in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation, contact Owen Moroney at (208) 334-3715.
AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency has adopted by proclamation the 2019-2021 Idaho Peregrine Falcon Seasons, establishing seasons and limits for taking of Peregrine Falcons in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation, contact Owen Moroney at (208) 334-3715.
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11.11.01 – Rules of the Idaho Peace Officer Standards and Training Council

*Docket No. 11-1101-1901*

053. Age.............................................................................................................................................. 12
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Summary of Proposed Rulemakings

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

THERE ARE NO PROPOSED RULES PUBLISHED
IN THE APRIL 3, 2019, IDAHO ADMINISTRATIVE BULLETIN, VOL. 19-4.

Please refer to the Idaho Administrative Bulletin, April 3, 2019, Vol. 19-4, for notices and text of all rulemakings, public hearings schedules, details on negotiated rulemaking, 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: adminrules@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

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