IDAHO ADMINISTRATIVE BULLETIN

February 7, 2024 – Vol. 24-2

Office of the Governor Division of Financial Management Office of the Administrative Rules Coordinator



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PREFACE

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Division of Financial Management, 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 **19-1** refers to the first Bulletin issued in calendar year **2019**; Bulletin **20-1** refers to the first Bulletin issued in calendar year **2020**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **19-1** refers to January 2019; Volume No. **20-2** refers to February 2020; and so forth. Example: The Bulletin published in January 2019 is cited as Volume **19-1**. The December 2019 Bulletin is cited as Volume **19-12**.

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 Bulletin publication. 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 sections 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.

"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. 38-0501-1901"

"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**).

"1901" 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 2019**. A subsequent rulemaking on this same rule chapter in calendar year 2019 would be designated as "1902". The docket number in this scenario would be 38-0501-1902.

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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Vol. No.	Monthly Issue of Bulletin	ARRF Due to DFM	Closing Date for Agency Filing	Bulletin Publication Date	21-day Comment Period End Date
23-2	February 2023	December 23, 2023	January 6, 2023	February 1, 2023	February 22, 2023
23-3	March 2023	January 27, 2023	February 10, 2023	March 1, 2023	March 22, 2023
23-4	April 2023	February 24, 2023	March 10, 2023	April 5, 2023	April 26, 2023
23-5	May 2023	March 24, 2023	April 7, 2023	May 3, 2023	May 24, 2023
23-6	June 2023	April 21, 2023	May 5, 2023	June 7, 2023	June 28, 2023
23-7	July 2023	May 26, 2023	June 9, 2023	July 5, 2023	July 26, 2023
23-8	August 2023	June 23, 2023	July 7, 2023	August 2, 2023	August 23, 2023
23-9	September 2023	July 21, 2023	August 4, 2023	September 6, 2023	September 27, 2023
23-10	October 2023	August 18, 2023	*September 1, 2023	October 4, 2023	October 25, 2023
23-11	November 2023	September 22, 2023	October 6, 2023	November 1, 2023	November 22, 2023
23-12	December 2023	October 27, 2023	November 9, 2023	December 6, 2023	December 27, 2023
24-1	January 2024	November 13, 2023	**November 27, 2023	January 3, 2024	January 24, 2024

BULLETIN PUBLICATION SCHEDULE FOR YEAR 2023

BULLETIN PUBLICATION SCHEDULE FOR YEAR 2024

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24-4	April 2024	February 23, 2024	March 8, 2024	April 3, 2024	April 24, 2024
24-5	May 2024	March 22, 2024	April 5, 2024	May 1, 2024	May 22, 2024
24-6	June 2024	April 19, 2024	May 3, 2024	June 5, 2024	June 26, 2024
24-7	July 2024	May 24, 2024	June 7, 2024	July 3, 2024	July 24, 2024
24-8	August 2024	June 21, 2024	July 5, 2024	August 7, 2024	August 28, 2024
24-9	September 2024	July 19, 2024	August 2, 2024	September 4, 2024	September 25, 2024
24-10	October 2024	August 16, 2024	*August 30, 2024	October 2, 2024	October 23, 2024
24-11	November 2024	September 20, 2024	October 4, 2024	November 6, 2024	November 27, 2024
24-12	December 2024	October 25, 2024	November 8, 2024	December 4, 2024	December 25, 2024
25-1	January 2025	November 15, 2024	**November 29, 2024	January 1, 2025	January 22, 2025

*Last day to submit a proposed rule for the rulemaking to remain on course for review by the upcoming legislature.

**Last day to submit a pending rule to be reviewed by the upcoming legislature.

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IDAPA 13 – IDAHO FISH AND GAME COMMISSION

ESTABLISHING SEASONS AND LIMITS FOR HUNTING, FISHING, AND TRAPPING IN IDAHO

DOCKET NO. 13-0000-2400P1

NOTICE OF ADOPTION OF PROCLAMATION FOR CALENDAR YEAR 2024

AUTHORITY: As authorized by Section 36-104, Idaho Code, and in compliance with Sections 36-105(3), Idaho Code, the Commission adopts proclamations establishing seasons and limits for hunting, fishing, and trapping in Idaho.

AVAILABILITY OF OFFICIAL PROCLAMATIONS: Hunters, anglers, and trappers are advised to consult the text of the Commission's official proclamation before hunting, fishing, or trapping. Current versions of Commission proclamations are available on-line at https://idfg.idaho.gov/rules, with print versions available at Idaho Department of Fish and Game offices and license vendors.

DESCRIPTIVE SUMMARY AND PUBLIC MEETING SCHEDULE: The Commission meeting schedule and meeting agendas are available on-line at Commission Meeting Schedule, with opportunities for public comment generally scheduled at its January, March, May, July, and November meetings.

Current/scheduled proclamations of the Commission include:

• Big Game: elk, deer (mule and white-tailed), mountain lion, black bear, pronghorn, gray wolf

The proclamation adopted by the Commission for the 2023-2024 and 2024-2025 big game hunting seasons includes black bear seasons through July 2025 and gray wolf and mountain lion seasons through June 2025.

- **Grizzly Bear:** At a January 25, 2024 (public hearing January 24, 2024) meeting, the Commission adopted a proclamation clarifying how it would use its discretion to open and close seasons, prohibit harvest of adult bears accompanied by young, and otherwise set numeric limits for the take of grizzly bear in the Greater Yellowstone Ecosystem should the Commission authorize harvest after delisting. Currently there is no open season for grizzly bear and grizzly bears remained a listed species in Idaho.
- **Big Game:** moose, bighorn sheep, mountain goat (once-in-a-lifetime big game species)

2023-2024 seasons were set at the Commission's quarterly meeting on January 26, 2023 (public hearing January 25, 2023).

• Migratory Game Birds

The proclamation adopted by the Commission for 2023-2024 seasons include waterfowl seasons through March 2024.

2024-2025 season setting is scheduled for Commission action on a conference call in April.

• Upland Game, Furbearer, Falconry, Upland (non-migratory) Game Birds: turkey, pheasant, grouse (except sage grouse), quail, partridge

The proclamation adopted by the Commission for 2023-24 includes upland game bird seasons through January 2024, upland game animal and falconry seasons through March 2024, and furbearer seasons through June 2024.

2024-2025 season setting took place at the Commission's quarterly meeting on January 25, 2024 (public hearing January 24, 2024). There the Commission adopted the 2024-2025 proclamation for seasons and limits for upland game animals, upland game birds (including turkey), furbearers, and falconry.

Sage Grouse

2024 season setting is scheduled for Commission Action on July 23, 2024 (public hearing July 22, 2024).

Fishing (except for spring/summer chinook salmon)

The proclamation adopted for 2022-2024 seasons includes fishing seasons (except for spring/summer chinook salmon) through December 31, 2024.

2025-2026 season setting is scheduled for Commission action on November 7, 2024 (public hearing November 6, 2024).

• Spring/summer Chinook Salmon

Spring/summer chinook salmon season setting is scheduled for Commission action on March 20, 2024 (public hearing March 19, 2024).

• **Peregrine Falcon Capture** (for falconry use)

The proclamation adopted by the Commission for the 2022-2024 Peregrine Falcon capture season includes a season scheduled through August of 2024.

The 2024-2026 season setting for peregrine capture is scheduled for the quarterly Commission meeting on March 20, 2024 (public hearing March 19, 2024).

As provided in Sections 36-104 and 36-105, Idaho Code, the Commission retains authority to issue proclamations for additional species, amend existing proclamations, and adjust the above schedule as circumstances warrant. As provided in Section 36-106, Idaho Code, the Director has authority to close seasons or reduce bag or possession limits as circumstances may warrant and to open seasons to protect property from wildlife damage or for salvage.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation, contact Owen Moroney at (208) 334-3715.

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.37 – CHILDREN'S MENTAL HEALTH SERVICES

DOCKET NO. 16-0737-2401

NOTICE OF INTENT TO PROMULGATE RULES – ZERO-BASED REGULATION (ZBR) NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 16-2404, 16-2406, 16-2423, 16-2433, 56-202(b), 56-203B, 56-204A, 56-1003, 56-1004, and 56-1004A, Idaho Code.

MEETING SCHEDULE: Public meetings on the negotiated rulemaking will be held as follows:

VIRTUAL TELECONFERENCES Via WebEx
Wednesday, March 13, 2024 10:00 a.m 12:00 p.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=madf69e8e4f879258a7c78106b16800aa
Join by meeting number Meeting number (access code): 2761 837 4560 Meeting password: 4m3K9wtHp49 (46359984 from phones and video systems)
Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)
Wednesday, March 20, 2024 1:00 p.m 3:00 p.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=mddf3c6417b9a3eed2b9c3ebb0713392c
Join by meeting number Meeting number (access code): 2763 888 5364 Meeting password: nPbbFxD3m68 (67223933 from phones and video systems)
Join by phone +1 415 527 5035 United States Toll

+1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

The meeting site(s) will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below. Meeting(s) will conclude after 30 minutes if no participants sign in or wish to comment in the meeting.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do any of the following:

- 1. Attend the negotiated rulemaking meeting and participate in the negotiation process;
- 2. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting;
- 3. Submit written recommendations and comments to the address below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

Under Executive Order 2020-01: Zero-Based Regulation, the Division of Behavioral Health is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government while serving people with behavioral health conditions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text, contact Treena Clark, 208-334-6611. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's website at the following web address: https://healthandwelfare.idaho.gov/services-programs/behavioral-health.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before March 29, 2024.

DATED this 5th day of January, 2024.

Trinette Middlebrook and Frank Powell DHW - Administrative Rules Unit 450 W. State Street - 10th Floor P.O. Box 83720 Boise, ID 83720-0036 (208) 334-5500 phone; (208) 334-6558 fax dhwrules@dhw.idaho.gov email

Sections Affected Index

There are no sections of administrative rules affected in the February 7, 2024, Vol. 24-2, Idaho Administrative Bulletin.

LEGAL NOTICE

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 FEBRUARY 7, 2024, IDAHO ADMINISTRATIVE BULLETIN, VOL. 24-2

Please refer to the Idaho Administrative Bulletin February 7, 2024, Volume 24-2, for the notices and text of all rulemakings, proclamations, negotiated rulemaking and public hearing information and schedules, executive orders of the Governor, and agency contact information.

Electronic issues of the Idaho Administrative Bulletin can be viewed at www.adminrules.idaho.gov/

Office of the Administrative Rules Coordinator, Division of Financial Management P.O. Box 83720, Boise, ID 83720-0032 Phone: 208-334-3900; Email: adminrules@dfm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

Office of the Administrative Rules Coordinator Division of Financial Management Office of the Governor

July 1, 1993 – Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

This 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.

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

(Index of Current and Active Rulemakings)

Office of the Administrative Rules Coordinator Division of Financial Management

April 6, 2023 – February 7, 2024

(PLR 2024) – Final Effective Date Is Pending Legislative Review in 2024 (eff. date)L – Denotes Adoption by Legislative Action (eff. date)T – Temporary Rule Effective Date SCR # – denotes the number of a Senate Concurrent Resolution (Legislative Action) HCR # – denotes the number of a House Concurrent Resolution (Legislative Action)

(This Abridged Index includes all active rulemakings.)

IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE

02-ZBRR-2301 Rules of the Idaho Department of Agriculture – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 02, Chapters 13, 15; Title 03, Chapter 03; Title 04, Chapters 14, 23, 30, 32; and Title 06, Chapters 04, 09, 10, 16 – Bulletin Vol. 23-5

02.02.13, Commodity Dealers' Rules

 02-0213-2301
 Adoption of Pending Rule (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 24-1 (PLR 2024)

 02-0213-2301
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