

**FINAL PROPOSAL**  
**Dated August 23, 2019**

OMNIBUS RULEMAKING – NON-FEE RULES, DOCKET NO. 58-0000-1900

The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 6719 through 7039. Certain sections of IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality,” were revised as a logical outgrowth of the proposed rule and for consistency with [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. IDAPA 58.01.23, Subsections 001.03, 008.01, and 010.07, have been simplified and updated. IDAPA 58.01.23, Section 814, has been identified for deletion as it is included verbatim in Idaho Code § 67-5220(f).

The provisions in IDAPA 58.01.23, Sections 500, 501, 808 through 813, and 815 through 860, are included in IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General” (Attorney General Rules), and have been identified for deletion. With the deletion of those sections, it is necessary to incorporate by reference certain sections of the Attorney General Rules to meet the requirements of Idaho Code § 67-5206(5). IDAPA 04.11.01, Sections 800 through 815 and 830 through 860 (2018 Idaho Administrative Code), have been incorporated by reference and are attached. IDAPA 58.01.23, Sections 004 and 006, have been updated accordingly.

The proposed rule also includes non-substantive clerical revisions made by the Administrative Rules Coordinator using his authority under Idaho Code § 67-5202. “The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.” Idaho Code § 67-5202(2). The revisions are consistent with [Executive Order No. 2019-02](#), and did not alter the sense, meaning or effect of the rules (i.e., elimination of restrictive words such as “shall”).

DEQ recommends that the Idaho Board of Environmental Quality take the following action: Adopt a pending rule that includes 1) the described revisions in IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality,” 2) the Administrative Rules Coordinator’s clerical revisions, and 3) the remainder of the rule adopted as initially proposed. The recommended revisions to IDAPA 58.01.23 are in the attached “Revisions to Proposed Rule for Board Consideration.” The draft “Notice of Omnibus Rulemaking – Adoption of Pending Rule” is also attached.

**Rules 500 through 699**  
**Post-Pleading Procedure**

**Rules 500 through 509**  
**Alternative Dispute Resolution (ADR)**

**500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).**

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, factfinding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (7-1-93)

**501. NEUTRALS (RULE 501).**

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (7-1-93)

**502. CONFIDENTIALITY RULE 502).**

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or agency rule to be made public. (7-1-93)

**503. -- 509. (RESERVED)**

**Rules 510 through 519**  
**Prehearing Conferences**

**510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).**

The presiding officer may by order or notice issued to all parties and to all interested persons as defined in Section 158 convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery when discovery is authorized before the agency, arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-97)

**511. NOTICE OF PREHEARING CONFERENCE (RULE 511).**

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act (See Rule 551). (7-1-93)

**512. RECORD OF CONFERENCE (RULE 512).**

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. (7-1-93)

**Rules 790 through 799**  
**Appeal to District Court**

**790. PERSONS WHO MAY APPEAL (RULE 790).**

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if review of the final agency action would not provide an adequate remedy. (7-1-93)

**791. NOTICE OF APPEAL (RULE 791).**

The notice of appeal must be filed with the agency and with the district court and served on all parties. (7-1-93)

**01. Filing.** Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the District Court of the county in which: (7-1-93)

- a.** The hearing was held, (7-1-93)
- b.** The final agency action was taken, (7-1-93)
- c.** The party seeking review of the agency action resides, or operates its principal place of business in Idaho, or (7-1-97)
- d.** The real property or personal property that was the subject of the agency is located. (7-1-93)

**02. Time.** Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: (7-1-93)

- a.** Of the service date of the final order, (7-1-93)
- b.** Of the denial of the petition for reconsideration, or (7-1-93)
- c.** The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (7-1-93)

**792. -- 799. (RESERVED)**

**SUBCHAPTER C -- RULEMAKING**  
**Rules 800 through 860**  
**Rulemaking**

**Rules 800 through 809**  
**Introduction**

**800. FORMAL AND INFORMAL RULEMAKING (RULE 800).**

Formal rulemaking refers only to rulemaking procedures associated with formal notice of proposed rulemaking, receipt of and consideration of written or oral comment on the record in response to notice of proposed rulemaking, and adoption of rules. Informal rulemaking refers to informal procedures for development of, comment upon, or review of rules for later formal consideration. No rule may come into effect solely as a result of informal rulemaking. Agreements coming from informal rulemaking must be finalized by formal rulemaking. (7-1-93)

**801. -- 809. (RESERVED)**

Rules 810 through 819  
Informal, Negotiated Rulemaking

**810. LEGISLATIVE PREFERENCE FOR NEGOTIATED RULEMAKING PROCEDURES (RULE 810).**

This rule addresses informal, negotiated rulemaking as described by Section 67-5220, Idaho Code. The agency, when feasible, shall proceed by informal, negotiated rulemaking in order to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rulemaking; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. (7-1-93)

**811. PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN (RULE 811).**

If the agency determines that informal, negotiated rulemaking is feasible, it shall publish in the Idaho Administrative Bulletin a notice of intent to promulgate a rule. If the agency determines that informal, negotiated rulemaking is not feasible, it shall explain in its notice of intent to promulgate rules why informal rulemaking is not feasible and shall proceed to formal rulemaking as provided in this chapter. Reasons why the agency may find that informal, negotiated rulemaking is not feasible include, but are not limited to, the need for temporary rulemaking, the simple nature of the proposed rule change, the lack of identifiable representatives of affected interests, or determination that affected interests are not likely to reach a consensus on a proposed rule. The determination of the agency whether to use informal, negotiated rulemaking is not reviewable. (7-1-93)

**812. CONTENTS OF NOTICE OF INTENT TO PROMULGATE RULES (RULE 812).**

The notice of intent to promulgate rules shall announce that the agency intends to proceed by way of informal, negotiated rulemaking to develop a proposed rule and shall include: (7-1-93)

- 01. Subject Matter.** A brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking. (7-1-93)
- 02. Authority.** The statutory authority for the rulemaking. (7-1-93)
- 03. Obtain Copy.** An explanation how to obtain a preliminary draft of the proposed rules, if one is available. (7-1-93)
- 04. Issues.** The principal issues involved and the interests which are likely to be significantly affected by the rule. (7-1-93)
- 05. Agency Contacts.** The person(s) designated to represent the agency. (7-1-93)
- 06. Method of Participation.** An explanation how a person may participate in the informal, negotiated rulemaking. (7-1-93)
- 07. Schedule.** A proposed schedule for written comments or for a public meeting of interested persons, and a target date, if one exists, to complete negotiation and to publish a proposed rule for notice and comment. (7-1-93)

**813. PUBLIC MEETINGS (RULE 813).**

The agency may convene public meetings of interested persons to consider the matter proposed by the agency and to attempt to reach a consensus concerning a proposed rule with respect to the matter and any other matter the parties determine is relevant to the proposed rule. Person(s) representing the agency may participate in the deliberations. (7-1-93)

**814. REPORTS TO THE AGENCY (RULE 814).**

If the parties reach a consensus on a proposed rule, they shall transmit to the agency a report stating their consensus and, if appropriate, a draft of a proposed rule incorporating that consensus. If the parties are unable to reach a consensus on particular issues, they may transmit to the agency a report specifying those areas on which they reached consensus and those on which they did not, together with arguments for and against positions advocated by various

participants. The participants or any individual participant may also include in a report any information, recommendations, or materials considered appropriate. (7-1-93)

**815. AGENCY CONSIDERATION OF REPORT (RULE 815).**

The agency may accept in whole or in part or reject the consensus reached by the parties in publishing a proposed rule for notice and comment. (7-1-93)

**816. -- 819. (RESERVED)**

**Rules 820 through 829**  
**Petition to Initiate Rulemaking**

**820. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING (RULE 820).**

This rule addresses petitions to initiate rulemaking as described by Section 67-5230, Idaho Code. (7-1-93)

**01. Requirement.** Any person petitioning for initiation of rulemaking must substantially comply with this rule. (7-1-93)

**02. Form and Contents.** The petition must be filed with the agency and shall: (7-1-93)

**a.** Identify the petitioner and state the petitioner's interest(s) in the matter; (7-1-93)

**b.** Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and (7-1-93)

**c.** Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

**821. AGENCY RESPONSE TO PETITION (RULE 821).**

**01. Action of Agency.** Within twenty-eight (28) days after the agency has received a petition to initiate rulemaking, the agency shall initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial, unless the rulemaking authority is in a multi-member agency board or commission whose members are not full-time officers or employees of the state, in which case the multi-member board or commission shall have until the first regularly scheduled meeting of the multi-member board or commission that takes place seven (7) or more days after submission of the petition to initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial. (7-1-97)

**02. Denial.** If the petition is denied, the written denial shall state: (7-1-93)

**a.** The agency has denied your petition to initiate rulemaking. This denial is a final agency action within the meaning of Section 67-5230, Idaho Code. (7-1-93)

**b.** Pursuant to Section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rulemaking by filing a petition in the District Court of the county in which: (7-1-93)

**i.** The hearing was held, (7-1-93)

**ii.** This final agency action was taken, (7-1-93)

**iii.** The party seeking review resides, or operates its principal place of business in Idaho, or (7-1-97)

**iv.** The real property or personal property that was the subject of the denial of the petition for

rulemaking is located. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rulemaking. See Section 67-5273, Idaho Code. (7-1-93)

**822. NOTICE OF INTENT TO INITIATE RULEMAKING CONSTITUTES ACTION ON PETITION (RULE 822).**

The agency may initiate rulemaking proceedings in response to a petition to initiate rulemaking by issuing a notice of intent to promulgate rules in the Idaho Administrative Bulletin on the subject matter of the petition if it wishes to obtain further comment whether a rule should be proposed or what rule should be proposed. Issuance of a notice of intent to promulgate rules satisfies an agency's obligations to take action on the petition and is not a denial of a petition to initiate rulemaking. (7-1-93)

**823. -- 829. (RESERVED)**

**Rules 830 through 839**  
**Procedure on Rulemaking for Proposed and Pending Rules**

**830. REQUIREMENTS FOR NOTICE OF PROPOSED RULEMAKING (RULE 830).**

**01. Content of Notice of Proposed Rulemaking.** Every notice of proposed rulemaking filed with the Coordinator for publication in the Bulletin shall include: (4-7-11)

a. A statement of the specific statutory authority authorizing the rulemaking, including a citation to the specific section of Idaho Code that has occasioned the rulemaking or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; (4-7-11)

b. A statement in nontechnical language of the substance of the proposed rules, including a specific description of any fee or charge being imposed or increased; (4-7-11)

c. A statement whether the agency intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation. If the agency intends to take oral testimony on the proposed rule, the location, date and time of any public hearing must be included; (4-7-11)

d. A specific description, if applicable, of any negative fiscal effect on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year in which the pending rule will become effective; (4-7-11)

e. The mailing address to which written comments and requests for public hearings concerning the proposed rules must be mailed. If the agency accepts comments and requests by facsimile transmission (FAX) or by e-mail, the FAX number or e-mail address, or both, at which comments may be delivered must be provided; (4-7-11)

f. The name and telephone number of an agency contact to whom technical questions about the proposed rules may be referred; (4-7-11)

g. The deadline date for the submission of written comment on the proposed rules and for submitting requests for an opportunity for an oral presentation concerning the proposed rules; (4-7-11)

h. A statement whether negotiated rulemaking has been conducted, and if not, why not; and (4-7-11)

i. The text of the proposed rules in legislative format. (4-7-11)

**02. Filing a Proposed Rulemaking for Publication in the Bulletin.** (4-7-11)

a. In all cases. The agency must file the information required in Subsection 830.01 of this rule with the Coordinator for publication in the Bulletin. The Coordinator is responsible for transmitting all required

rulemaking documents to the Director of Legislative Services for analysis. (4-7-11)

**b.** When fees are imposed or increased. In addition, if a fee or charge is imposed or increased through the proposed rulemaking, the agency must prepare and file with the Coordinator a statement of economic impact. This cost/benefit analysis must reasonably estimate the agency's costs to implement the rule and reasonably estimate the costs that would be borne by citizens, the private sector, or both, if the fees or charges being proposed are imposed by the rule. The cost/benefit analysis is not part of the proposed rulemaking notice and is not published in the Bulletin; it is a separate document that is submitted as part of the proposed rulemaking filing. (4-7-11)

**03. Incorporation by Reference.** If an agency proposes to incorporate by reference into its rules any codes, standards or rules authorized by subsection 67-5229(1), Idaho Code, for incorporation by reference, the agency's notice of proposed rulemaking must also include the following information required by subsection 67-5229(2), Idaho Code: (4-7-11)

**a.** Required information. A brief synopsis explaining why the incorporation is needed. (4-7-11)

**b.** Electronic link or other access. A statement that notes where an electronic copy can be obtained or that provides an electronic link to the incorporated materials. If an electronic link is provided, at a minimum the link must be posted on the agency's website or included in the rule that is published in the Administrative Code on the Coordinator's website. If the incorporated material is copyrighted or otherwise unavailable, the rule must note where a copy of the incorporated materials may be viewed or purchased. (4-7-11)

**c.** Identification of version or edition incorporated. The agency must provide all of the information required by Subsection 67-5229(2), Idaho Code, regarding identifying with specificity the version or edition of the code, standard or rule that is incorporated by reference, including, but not limited to, the date the document was published, approved or adopted, or became effective. (4-7-11)

**d.** Example incorporations. The following are examples of the kind of specificity required by this Section and by Subsection 67-5229(2), Idaho Code: (4-7-11)

i. 2009 Edition of the International Building Code, published by the International Code Council, available online at <http://www.constructionbook.com/2009-international-building-code/>; (4-7-11)

ii. 2009 International Fire Code, published by International Code Council. Copies of the 2009 edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal. Copies of the 2009 International Fire Code are available for purchase from the International Code Council, Northwest Resource Center, PO Box 8004, Bellevue, WA 98004. (4-7-11)

iii. Code of Federal Regulations, Title 40, Part 35 Environmental Protection Agency's Regulations for State and Local Assistance under the Clean Water Act, Subpart A (July 1, 2009), available online at [http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=35&SUBPART=A&TYPE=PDF&YEAR=2009](http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=35&SUBPART=A&TYPE=PDF&YEAR=2009;); and (4-7-11)

iv. Federal Regulations adopted by the Drug Enforcement Agency, Department of Justice, published in the Federal Register; Amendments to Code of Federal Regulations, 21 CFR Part 1300, section 1300.01, Definitions of Schedule III Controlled Substances, 74 Federal Register No. 232, page 63609 (December 4, 2009), available online at [http://www.nigc.gov/LinkClick.aspx?fileticket=\\_YB0eC63Jh4%3D&tabid=57&mid=345](http://www.nigc.gov/LinkClick.aspx?fileticket=_YB0eC63Jh4%3D&tabid=57&mid=345). (4-7-11)

**831. INFORMAL PHASES OF FORMAL RULEMAKING (RULE 831).**

In addition to the formal phases of rulemaking proceedings, the agency may schedule meetings after the formal proposal of rules to explain the operation of the rules proposed. (7-1-93)

**832. COMMENTS ON PROPOSED RULES (RULE 832).**

Deadlines for comment upon proposed rules or amendments to proposed rules will be set forth in the Idaho Administrative Bulletin. Comments should be made to the officers listed in the notices of proposed rulemaking published in the Idaho Administrative Bulletin. Further information concerning individual rulemaking should be directed to the contact person listed for that rulemaking in the Idaho Administrative Bulletin. (7-1-93)

**833. PETITIONS FOR ORAL PRESENTATION (RULE 833).**

**01. Requirement.** Any person petitioning for an opportunity for an oral presentation in a substantive rulemaking must substantially comply with this rule. (7-1-93)

**02. Content.** The petition shall: (7-1-93)

**a.** Identify the petitioner and state the petitioner's interests in the matter, (7-1-93)

**b.** Describe the nature of the opposition to or support of the rule or amendment to the rule proposed to be promulgated by the agency, and (7-1-93)

**c.** Indicate alternative proposals of the petitioner and any statute, order, rule or other controlling law or factual allegations upon which the petitioner relies to support the request for the opportunity to provide an oral presentation. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

**03. Oral Presentation.** Within fourteen (14) days after receiving a petition for an oral presentation, the agency shall schedule the oral presentation or deny it. The agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or another agency, but no oral presentation need be provided when the agency has no discretion as the substantive content of a proposed rule because the proposed rule is intended solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule. If oral presentation is granted, notice of the oral presentation shall be published in the Idaho Administrative Bulletin. If oral presentation is denied, the denial shall state the grounds for denial. (7-1-93)

**834. THE RULEMAKING RECORD (RULE 834).**

The agency shall maintain a record of each rulemaking proceeding. (7-1-93)

**01. Contents.** The record for a rulemaking proceeding shall include: (7-1-93)

**a.** Copies of all publications in the Idaho Administrative Bulletin relating to that rulemaking proceeding; (7-1-93)

**b.** All written petitions, submissions, and comments received by the agency, and the agency's responses to those petitions, submissions and comments; (7-1-93)

**c.** All written materials considered by the agency in connection with formulating the proposal or adoption of the rule; (7-1-93)

**d.** A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and (7-1-93)

**e.** Any other materials or documents prepared in conjunction with the rulemaking, including any summaries prepared for the agency in considering the rulemaking. (7-1-93)

**02. Recording or Reporting.** All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at their own expense. (7-1-97)

**835. ADOPTION AND PUBLICATION OF PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION (RULE 835).**

**01. Adoption.** After the expiration of the written comment period for rulemaking and following any oral presentation on the rulemaking, but no sooner than seven (7) days after the expiration of the comment period, the

agency shall consider fully all issues presented by the written and oral submissions respecting the proposed rule before adopting a pending rule. (7-1-97)

**02. Publication.** Upon the agency's adoption of a pending rule, the agency shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the agency need not publish the full text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and must note all changes that have been made. In addition, the agency must publish in the bulletin a concise explanatory statement containing: (7-1-97)

- a.** The reasons for adopting the pending rule; (7-1-97)
- b.** A statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes; (7-1-97)
- c.** The date on which the pending rule will become final and effective pursuant to Section 67-5224(5), Idaho Code; (7-1-97)
- d.** A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature; (7-1-97)
- e.** An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and (7-1-97)
- f.** A statement how to obtain a copy of the agency's written review of and written responses to the written and oral submissions respecting the proposed rule. (7-1-97)

**03. Rule Imposing or Increasing Fees.** When any pending rule imposes a new fee or charge or increases an existing fee or charge, the agency shall provide the coordinator with a description of that portion of the rule imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. (7-1-97)

**836. FINAL RULES (RULE 836).**

Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in Section 67-5224, Idaho Code. (7-1-97)

**837. -- 839. (RESERVED)**

**840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES (RULE 840).**

**01. Gubernatorial Finding.** The agency may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge. (7-1-97)

**02. Effective Date.** Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective. (7-1-97)

**03. Expiration.** In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule that has become effective pursuant to Section 67-5224(5), Idaho Code. (7-1-97)

**04. Notice and Publication.** Agencies shall give such notice as is practicable in connection with

adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (7-1-97)

**05. Associated Proposed Rule.** Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, an agency must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final. (7-1-97)

**841. -- 849. (RESERVED)**

**850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES (RULE 850).**

The agency may amend pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will be incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. (7-1-97)

**851. -- 859. (RESERVED)**

**860. PERSONS WHO MAY SEEK JUDICIAL REVIEW (RULE 860).**

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an agency rule (either temporary or final) may seek judicial review in district court. (7-1-93)

**01. Filing.** The petition for judicial review must be filed with the agency and with the district court and served on all parties. Pursuant to Section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: (7-1-93)

- a.** The hearing was held; (7-1-93)
- b.** The final agency action was taken; (7-1-93)
- c.** The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (7-1-97)
- d.** The real property or personal property that was the subject of the agency is located. (7-1-93)

**02. Time.** Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (7-1-93)

**861. -- 999. (RESERVED)**

# IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-1900

## NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to the following Idaho Code provisions:

IDAPA 58.01.02- Chapters 1 and 36, Title 39, Idaho Code

IDAPA 58.01.04 - Chapters 1 and 36, Title 39, Idaho Code

IDAPA 58.01.10 - Section 39-4405, Idaho Code

IDAPA 58.01.16 - Chapters 1 and 36, Title 39, Idaho Code

IDAPA 58.01.21 - Sections 39-105, 39-107, and 74-114(8), Idaho Code

IDAPA 58.01.22 - Chapters 1 and 36, Title 39, Idaho Code

IDAPA 58.01.23 - Sections 39-105, 39-107 and 67-5206, Idaho Code

IDAPA 58.01.24 - Chapters 1, 36, 44, 72 and 74, Title 39, Idaho Code

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 58 rules of the Department of Environmental Quality:

IDAPA 58.01.02, Water Quality Standards

IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants

IDAPA 58.01.10, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended

IDAPA 58.01.16, Wastewater Rules

IDAPA 58.01.21, Rules Governing the Protection and Disclosure of Records in the Possession of DEQ

IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities

IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality

IDAPA 58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites

More information regarding this rule docket is available at [www.deq.idaho.gov/58-0000-1900](http://www.deq.idaho.gov/58-0000-1900).

DEQ received no public comments; however, the text of the rule has been amended in accordance with Idaho Code § 67-5227. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 6719 through 7039.

Certain sections of IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality,” were revised as a logical outgrowth of the proposed rule and for consistency with [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. IDAPA 58.01.23, Subsections 001.03, 008.01, and 010.07, have been simplified and updated. IDAPA 58.01.23, Section 814, has been identified for deletion as it is included verbatim in Idaho Code § 67-5220(f).

The provisions in IDAPA 58.01.23, Sections 500, 501, 808 through 813, and 815 through 860, are included in IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General” (Attorney General Rules), and have been identified for deletion. With the deletion of those sections, it is necessary to incorporate by reference

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certain sections of the Attorney General Rules to meet the requirements of Idaho Code § 67-5206(5). IDAPA 04.11.01, Sections 800 through 815 and 830 through 860 (2018 Idaho Administrative Code), have been incorporated by reference and are attached. IDAPA 58.01.23, Sections 004 and 006, have been updated accordingly.

The proposed rule also includes non-substantive clerical revisions made by the Administrative Rules Coordinator using his authority under Idaho Code § 67-5202. “The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.” Idaho Code § 67-5202(2). The revisions are consistent with [Executive Order No. 2019-02](#), and did not alter the sense, meaning or effect of the rules (i.e., elimination of restrictive words such as “shall”).

The pending rule adopted by the Idaho Board of Environmental Quality includes 1) the described revisions in IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality,” 2) the Administrative Rules Coordinator’s clerical revisions, and 3) the remainder of the rule adopted as initially proposed.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact the undersigned.

DATED this November 20, 2019

Paula J. Wilson  
Department of Environmental Quality  
1410 N. Hilton/Boise, Idaho 83706  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**Revisions to Proposed Rule for Board Consideration, Docket No. 58-0000-1900  
(dated August 23, 2019)**

The revisions made to the proposed rule are in legislative format. Only the rule sections containing revisions are included.

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

**001. TITLE, SCOPE, AND APPLICABILITY.**

**01. Title.** These rules are titled IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” (3-15-02)

**02. Scope.** These rules establish general standards for contested case proceedings, petitions for rulemaking, and declaratory ruling proceedings, ~~and rulemaking procedures~~ as required by law. (3-15-02)

**03. Applicability of Contested Case Provisions.** Section 39-107, Idaho Code, provides the opportunity to initiate a contested case proceeding. It provides that any person aggrieved by an action or inaction of the Department shall be afforded an opportunity for a fair hearing upon a request therefore in writing pursuant to Chapter 52, Title 67, Idaho Code. These rules govern such proceedings, except ~~for that:~~

~~a. Idaho Pollutant Discharge Elimination System permit decisions are governed by IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program,” Section 204; and~~

~~b. Personnel grievances and employment related actions. These are governed by IDAPA 15.04.01, “Rules of the Division of Human Resources and Personnel Commission,” and the DEQ Personnel Policies and Procedures Manual.~~ (4-6-05)

(BREAK)

**004. INCORPORATION BY REFERENCE.**

~~These rules do not contain documents incorporated by reference. IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General (2018 Idaho Administrative Code),” Sections 500, 501, 800 through 815, and 830 through 860, are incorporated into these rules by reference.~~ (3-15-02)

(BREAK)

**006. APPLICABILITY OF RULES OF ADMINISTRATIVE PROCEDURE OF THE ATTORNEY GENERAL.**

The Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, provides specific authority for the Board to adopt contested case rules that are consistent with the rules adopted by the Attorney General under Section 67-5206(4), Idaho Code. To the extent possible given the statutory authority of, and the programs administered by, the Department, the contested case provisions in these rules are consistent with the provisions of IDAPA 04.11.01, “Idaho Rules of Administrative Procedures of the Attorney General” (Attorney General Rules). The majority of the Attorney General Rules are adopted; ~~however,~~ within these rules. Sections 500, 501, 800 through 815, and 830 through 860 of the Attorney General Rules are incorporated by reference into these rules at Section 004. ~~e~~Certain provisions of the Attorney General Rules are not adopted or are modified to reflect administrative practice before the Board and the Environmental Protection and Health Act. (3-15-02)

**008. FILING AND SERVICE OF DOCUMENTS.**

**01. Filing of Documents.** (3-15-02)

~~a. All documents concerning actions governed by these rules shall be filed with the hearing~~

coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, FAX No. (208)373-0481. Documents may also be filed by fax or may be filed electronically. With the exception of petitions initiating a contested case, declaratory ruling, or rulemaking, pleadings and other documents may be filed by facsimile transmission (FAX). The originating party is responsible for retaining proof of filing by FAX. The hearing coordinator's fax number and email address for filing electronically are available at [www.deq.idaho.gov/petitions-for-review](http://www.deq.idaho.gov/petitions-for-review). The documents are deemed to be filed on the date received by the hearing coordinator. Upon receipt of the filed document, the hearing coordinator will provide a conformed copy confirmation to the originating party. (3-20-04)

b. Upon receipt of a petition initiating a contested case, rulemaking, or declaratory ruling, the hearing coordinator shall serve the petition upon the Department. In any proceeding involving a permit, the hearing coordinator shall serve upon the permit applicant or permit holder the petition and a notice informing the permit applicant or permit holder that they have twenty-one (21) days after the date of service of the petition to intervene in the proceeding and that they may be bound by any decision rendered in the proceeding. (3-15-02)

02. **Service of Documents.** From the time a party files its petition initiating a contested case, rulemaking or, declaratory ruling, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties or representatives designated pursuant to Section 044, unless otherwise directed by order or notice or by the presiding officer. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The parties may serve courtesy copies upon the presiding officer. (3-15-02)

(BREAK)

#### 010. DEFINITIONS AND ABBREVIATIONS.

(BREAK)

07. **Hearing Coordinator.** The Person who coordinates, schedules, issues notices, and administers actions governed by these rules on behalf of the presiding officer. The hearing coordinator assigns a permanent docket number to each action for purposes of identification and acts as custodian of records for all information and documentation involving actions governed by these rules. The hearing coordinator's mailing address and phone number is: Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0418, FAX (208)373-0481. Hearing coordinator contact information is available at [www.deq.idaho.gov/petitions-for-review](http://www.deq.idaho.gov/petitions-for-review). (3-15-02)

(BREAK)

418. -- 499-509. (RESERVED)

#### ~~500. ALTERNATIVE RESOLUTION OF CONTESTED CASES.~~

~~The Idaho Legislature encourages informal means of alternative dispute resolution (ADR) and the parties to a contested case may agree to use ADR. For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact finding, minitrials, and arbitration, or any combination of them. (3-15-02)~~

#### ~~501. NEUTRALS.~~

~~When alternate dispute resolution (ADR) is agreed by the parties to be used for all or a portion of a contested case, a neutral may be used to assist the parties in resolving their disputed issues. The neutral may be an employee of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (3-15-02)~~

~~502. -- 509. (RESERVED)~~

(BREAK)

**803. -- 807~~999~~. (RESERVED)**

**808. — RULES GOVERNING RULEMAKING PROCEDURES.**

Sections 808 through 860 establish provisions governing rulemaking procedures. (3-15-02)

**809. — FORMAL AND INFORMAL RULEMAKING.**

Formal rulemaking refers only to rulemaking procedures associated with formal notice of proposed rulemaking, receipt of and consideration of written or oral comment on the record in response to notice of proposed rulemaking, and adoption of rules. Informal rulemaking refers to informal procedures for development of, comment upon, or review of rules for later formal consideration. No rule may come into effect solely as a result of informal rulemaking. Agreements coming from informal rulemaking must be finalized by formal rulemaking. (3-15-02)

**810. — LEGISLATIVE PREFERENCE FOR NEGOTIATED RULEMAKING PROCEDURES.**

This rule addresses informal, negotiated rulemaking as described by Section 67-5220, Idaho Code. The Department, when feasible, shall proceed by informal, negotiated rulemaking in order to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rulemaking; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. (3-15-02)

**811. — PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN.**

If the Department determines that informal, negotiated rulemaking is feasible, it shall publish in the Idaho Administrative Bulletin a notice of intent to promulgate a rule. If the Department determines that informal, negotiated rulemaking is not feasible, it shall proceed to formal rulemaking as provided in this chapter and explain in its notice of proposed rulemaking why informal rulemaking is not feasible. Reasons why the Department may find that informal, negotiated rulemaking is not feasible include, but are not limited to, the need for temporary rulemaking, the simple nature of the proposed rule change, the lack of identifiable representatives of affected interests, or determination that affected interests are not likely to reach a consensus on a proposed rule. The determination of the Department whether to use informal, negotiated rulemaking is not reviewable. (4-4-13)

**812. — CONTENTS OF NOTICE OF INTENT TO PROMULGATE RULES.**

The notice of intent to promulgate rules shall announce that the Department intends to proceed by way of informal, negotiated rulemaking to develop a proposed rule and shall include: (3-15-02)

01. **Subject Matter.** A brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking. (3-15-02)

02. **Authority.** The statutory authority for the rulemaking. (3-15-02)

03. **Obtain Copy.** An explanation how to obtain a preliminary draft of the proposed rules, if one is available. (3-15-02)

04. **Issues.** The principal issues involved and the interests which are likely to be significantly affected by the rule. (3-15-02)

05. **Department Contacts.** The person(s) designated to represent the Department. (3-15-02)

06. **Method of Participation.** An explanation how a person may participate in the informal, negotiated rulemaking. (3-15-02)

07. **Schedule.** A proposed schedule for written comments or for a public meeting of interested persons, and a target date, if one (1) exists, to complete negotiation and to publish a proposed rule for notice and comment. (3-15-02)

**813. — PUBLIC MEETINGS.**

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~~The Department may convene public meetings of interested persons to consider the matter proposed by the Department and to attempt to reach a consensus concerning a proposed rule with respect to the matter and any other matter the parties determine is relevant to the proposed rule. Person(s) representing the Department may participate in the deliberations. (3-15-02)~~

~~**814. NEGOTIATED RULEMAKING SUMMARY.**~~

~~The Department shall prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking and make that summary available to persons who attended the negotiated rulemaking meetings. (4-4-13)~~

~~**815. DEPARTMENT CONSIDERATION OF CONSENSUS REACHED BY PARTIES.**~~

~~The Department may accept in whole or in part or reject the consensus reached by the parties in publishing a proposed rule for notice and comment. (3-15-02)~~

~~**816. 829. (RESERVED)**~~

~~**830. REQUIREMENTS FOR NOTICE OF PROPOSED RULEMAKING.**~~

~~**01. Content.** Every notice of proposed rulemaking shall include: (3-15-02)~~

~~**a.** A statement of the subject matter of the proposed rules; (3-15-02)~~

~~**b.** A statement of the specific statutory authority for the proposed rules, including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking; (3-15-02)~~

~~**c.** A statement in nontechnical terms of the substance of the proposed rules, and, if the Department intends to take oral testimony on the proposed rule, the location, date and time of the oral presentations; (3-15-02)~~

~~**d.** A statement whether the Department intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation; (3-15-02)~~

~~**e.** The address to which written submissions concerning the proposed rules must be mailed; (3-15-02)~~

~~**f.** The name and telephone number of an Department contact to whom questions about the proposed rules may be referred; (3-15-02)~~

~~**g.** The deadline for written comment on the proposed rules and for asking for an opportunity for an oral presentation concerning the proposed rules; (3-15-02)~~

~~**h.** If negotiated rulemaking was not conducted, an explanation of the agency's determination that negotiated rulemaking was not feasible; (4-4-13)~~

~~**i.** A summary of the proposed rules; and (3-15-02)~~

~~**j.** The name, mailing address and telephone number of an Department contact person for the rulemaking. (3-15-02)~~

~~**02. Availability of Information.** This information will be published in the Idaho Administrative Bulletin and be available directly from the Department. The notice of proposed rulemaking must be accompanied by a document showing the text of the proposed rule in legislative format. (3-15-02)~~

~~**831. INFORMAL PHASES OF FORMAL RULEMAKING.**~~

~~In addition to the formal phases of rulemaking proceedings, the Department may schedule meetings after the formal proposal of rules to explain the operation of the rules proposed. (3-15-02)~~

**832. COMMENTS ON PROPOSED RULES.**

~~Deadlines for comment upon proposed rules or amendments to proposed rules will be set forth in the Idaho Administrative Bulletin. Comments should be made to the officers listed in the notices of proposed rulemaking published in the Idaho Administrative Bulletin. Further information concerning individual rulemaking should be directed to the contact person listed for that rulemaking in the Idaho Administrative Bulletin. (3-15-02)~~

**833. PETITIONS FOR ORAL PRESENTATION.**

~~01. Requirement. Any person petitioning for an opportunity for an oral presentation in a substantive rulemaking must substantially comply with this rule. (3-15-02)~~

~~02. Content. The petition shall: (3-15-02)~~

~~a. Identify the petitioner and state the petitioner's interests in the matter, (3-15-02)~~

~~b. Describe the nature of the opposition to or support of the rule or amendment to the rule proposed to be promulgated by the Department, and (3-15-02)~~

~~c. Indicate alternative proposals of the petitioner and any statute, order, rule or other controlling law or factual allegations upon which the petitioner relies to support the request for the opportunity to provide an oral presentation. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-15-02)~~

~~03. Oral Presentation. Within fourteen (14) days after receiving a petition for an oral presentation, the Department shall schedule the oral presentation or deny it. The Department shall provide an opportunity for oral presentation if requested by twenty five (25) persons, a political subdivision, or another agency, but no oral presentation need be provided when the Department has no discretion as the substantive content of a proposed rule because the proposed rule is intended solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal rule that has been amended since the adoption of the rule. If oral presentation is granted, notice of the oral presentation shall be published in the Idaho Administrative Bulletin. If oral presentation is denied, the denial shall state the grounds for denial. (3-15-02)~~

**834. THE RULEMAKING RECORD.**

~~The Department shall maintain a record of each rulemaking proceeding. (3-15-02)~~

~~01. Contents. The record for a rulemaking proceeding shall include: (3-15-02)~~

~~a. Copies of all publications in the Idaho Administrative Bulletin relating to that rulemaking proceeding; (3-15-02)~~

~~b. All written petitions, submissions, and comments received by the Department, and the Department's responses to those petitions, submissions and comments; (3-15-02)~~

~~c. All written materials considered by the Department in connection with formulating the proposal or adoption of the rule; (3-15-02)~~

~~d. A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and (3-15-02)~~

~~e. Any other materials or documents prepared in conjunction with the rulemaking, including any summaries prepared for the Department in considering the rulemaking. (3-15-02)~~

~~02. Recording or Reporting. All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the Department's expense. The Department may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at~~

their own expense. (3-15-02)

**835. ADOPTION AND PUBLICATION OF PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION.**

~~01. Adoption. After the expiration of the written comment period for rulemaking and following any oral presentation on the rulemaking, but no sooner than seven (7) days after the expiration of the comment period, the Board shall consider fully all issues presented by the written and oral submissions respecting the proposed rule before adopting a pending rule. (3-15-02)~~

~~02. Publication. Upon the Board's adoption of a pending rule, the Department shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the Department need not publish the full text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and must note all changes that have been made. In addition, the Department must publish in the bulletin a concise explanatory statement containing: (3-15-02)~~

~~a. The reasons for adopting the pending rule; (3-15-02)~~

~~b. A statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes; (3-15-02)~~

~~c. The date on which the pending rule will become final and effective pursuant to Section 67-5224(5), Idaho Code; (3-15-02)~~

~~d. A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature; (3-15-02)~~

~~e. An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and (3-15-02)~~

~~f. A statement how to obtain a copy of the Department's written review of and written responses to the written and oral submissions respecting the proposed rule. (3-15-02)~~

~~03. Rule Imposing or Increasing Fees. When any pending rule imposes a new fee or charge or increases an existing fee or charge, the Department shall provide the coordinator with a description of that portion of the rule imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. (3-15-02)~~

**836. FINAL RULES.**

~~Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in Section 67-5224, Idaho Code. (3-15-02)~~

~~837. 839. (RESERVED)~~

**840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES.**

~~01. Gubernatorial Finding. The Board may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge. (3-15-02)~~

~~02. Effective Date. Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective. (3-15-02)~~

~~03. Expiration. In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule that has become effective pursuant to Section 67-5224(5), Idaho Code. (3-15-02)~~

~~04. Notice and Publication. The Department shall give such notice as is practicable in connection with adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (3-15-02)~~

~~05. Associated Proposed Rule. Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, the Department must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final. (3-15-02)~~

~~841. - 849. (RESERVED)~~

~~850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES.~~

~~The Board may amend pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will be incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. (3-15-02)~~

~~851. - 859. (RESERVED)~~

~~860. PETITION FOR JUDICIAL REVIEW OF AN ADMINISTRATIVE RULE OF THE DEPARTMENT.~~

~~Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an administrative rule of the Department (either temporary or final) may seek judicial review in district court. (4-7-11)~~

~~01. Filing and Service. The petition for judicial review must be filed with the hearing coordinator as set out in Section 008 and with the district court and served on all parties. Pursuant to Section 39-107(6), Idaho Code, the petition for judicial review shall also be served upon the Chairman of the Board, the Director of the Department, and upon the Attorney General of the State of Idaho. Pursuant to Section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: (4-7-11)~~

~~a. The hearing was held; (3-15-02)~~

~~b. The final agency action was taken; (3-15-02)~~

~~c. The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (3-15-02)~~

~~d. The real property or personal property that was the subject of the agency action is located. (3-15-02)~~

~~02. Time. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (3-15-02)~~

~~861. - 999. (RESERVED)~~