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**IDAPA 02
TITLE 01
Chapter 01**

IDAPA 02 - DEPARTMENT OF AGRICULTURE

**02.01.01 - RULES OF PRACTICE AND PROCEDURE
OF THE DEPARTMENT OF AGRICULTURE**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-101(3), Idaho Code. (1-3-94)

001. TITLE AND SCOPE.

The title of this chapter is Idaho Rules of Practice and Procedure of the Idaho Department of Agriculture. This chapter has the following scope: these rules shall govern the practice and procedure before the Idaho Department of Agriculture. These rules shall also govern the practice and procedure before the following commissions: Alfalfa Seed Commission, Idaho Honey Advertising Commission, Idaho Hop Growers Commission, Idaho Mint Growers Commission and Board of Sheep Commissioners. The official citation of this chapter is IDAPA 02.01.01.000 et.seq. For example, this Section's citation is IDAPA 02.01.01.001. (1-3-94)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (1-3-94)

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeals before the Department of Agriculture under this chapter. (1-3-94)

004. DEFINITIONS.

The Idaho Department of Agriculture adopts the definitions set forth in Section 67-5201, Idaho Code. (1-3-94)

01. Designated Individual Member of Agency Staff. A designated individual member of agency staff is any of the following: (1-3-94)

a. Any member of the staff of the Department of Agriculture designated in a legal notice to receive written comments in a rule-making action; or (1-3-94)

b. Any member of the staff of the Department of Agriculture appointed by the director to preside at a hearing; or (1-3-94)

c. Any person designated by the Idaho Alfalfa Seed Commission, the Idaho Honey Advertising Commission, the Idaho Hop Commission, the Idaho Mint Growers Commission, or the Idaho Board of Sheep Commissioners to receive legal documents or other communications; or (1-3-94)

d. Any other member of the staff of the Department of Agriculture designated by the director to receive legal documents or other communications. (1-3-94)

005. REFERENCE TO AGENCY.

Reference to the agency in these Rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, or presiding officer, as context requires. Reference to the agency head means to the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. (1-3-94)

006. LIBERAL CONSTRUCTION.

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. (1-3-94)

007. -- 009. (RESERVED).

010. PRESIDING OFFICERS AND HEARING OFFICERS.

01. Presiding Officer. (1-3-94)

a. Any hearing conducted under these rules shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the Director of the Department of Agriculture, or any hearing officer appointed by the Director or designated by statute. (1-3-94)

b. One or more members of the agency board, the agency director, or duly appointed hearing officer may preside at a hearing as authorized by statute or rule. When more than one officer sits at a hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer. (1-3-94)

c. If the presiding officer or any decision maker has a potential conflict of interest as defined in Section 59-703(4), Idaho Code, that officer shall comply with the requirements of the Ethics in Government Act of 1990, Title 59, Chapter 7, Idaho Code (e.g. Sections 59-701 through 59-705, Idaho Code). (1-3-94)

d. Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, when a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (1-3-94)

02. **Appointment of Hearing Officers.** A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. (1-3-94)

03. **Hearing Officers Contrasted With Agency Head.** Agency heads are not hearing officers, even if they are presiding at contested cases. The term "hearing officer" as used in these rules refers only to officers subordinate to the agency head. (1-3-94)

04. **Disqualification of Officers Hearing Contested Cases.** Pursuant to Section 67-5252, Idaho Code, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a presiding officer and any party shall have a right to move to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided by law or any cause for which a judge is or may be disqualified. Any party may, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or promptly upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer's determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 59-704 and 67-5252(4), Idaho Code. (1-3-94)

05. **Scope of Authority of Hearing Officers.** Unless the agency otherwise provides, hearing officers have the standard scope of authority, which is: (1-3-94)

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; (1-3-94)

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; (1-3-94)

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and (1-3-94)

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer (1-3-94)

e. If the presiding officer is not the agency head, the presiding officer shall issue a recommended order unless specifically directed in writing by the agency head to issue a preliminary order. (1-3-94)

011. -- 049. (RESERVED).

050. GENERAL PROVISIONS.

01. Office. (1-3-94)

a. The central office of the agency is in Boise, Idaho. The address is the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho, 83712-0790. (1-3-94)

b. The mailing address for the central office is P.O. Box 790, Boise, Idaho 83701. (1-3-94)

c. The telephone number of the central office is (208)334-3240. (1-3-94)

d. The fax number of the central office is (208) 334-2170. (1-3-94)

e. Office hours of the central office are 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (1-3-94)

02. Communications. All written communications and documents concerning any matter covered by these rules should be addressed to the Legal Bureau at the central office of the Idaho Department of Agriculture, or to designated individual members of agency staff or to the presiding officer. All communications and documents are deemed to be officially received only when delivered during office hours to the Legal Bureau of the central office of the Agency or to designated individual members of agency staff, or to the presiding officer. (1-3-94)

03. Identification. Communications should embrace but one subject and should be identified by the name and address of the communicant. When the subject matter pertains to a proceeding, the proceeding should be identified by appropriate name, number or otherwise. (1-3-94)

04. Transcript. The official transcript of the hearing will be taken in accordance with the provisions of Section 67-5242(3)(d), Idaho Code. (1-3-94)

051. -- 099. (RESERVED).

100. PARTIES.

01. Classification of Parties. Parties to proceedings before the agency shall be styled applicant, petitioner, complainant, respondent, intervenor, or protestant according to the nature of the proceedings and the relationship of the parties thereto. (1-3-94)

02. Applicant. Persons applying or petitioning for any right or authority from the agency shall be styled "applicants". (1-3-94)

03. Petitioner. Persons petitioning for rehearing, or reconsideration under Sections 67-5230 and 67-5232, Idaho Code, or for affirmative relief (other than complainants) shall be styled "petitioners". (1-3-94)

04. Complainant. Persons who complain to the agency of any act or omission shall be styled "complainants". In any proceedings which the agency brings on its own motion, it shall be styled "complainant".

(1-3-94)

05. Respondent. Persons against whom any complaint is filed or investigation initiated shall be styled "respondents". (1-3-94)

06. Intervenor. Persons permitted to intervene, as provided in these rules, shall be styled "intervenors". (1-3-94)

07. Protestant. Persons opposing applications or petitions shall be styled "protestants". (1-3-94)

08. Staff. The agency's staff may appear at any hearing and shall have all rights of participation as a party to the proceeding, and if counsel is desired, the attorney for the agency will represent the staff. (1-3-94)

101. -- 149. (RESERVED).

150. APPEARANCES AND PRACTICE.

01. Rights of Parties. At any hearing, all parties named in the preceding rule shall be entitled to enter an appearance, to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding. Other parties determined by the agency or presiding officer to be directly and substantially affected by the proceedings may enter an appearance, introduce evidence, and subject to the discretion of the agency or presiding officer, may otherwise participate in the conduct of the proceedings. (1-3-94)

02. Taking of Appearances. Parties shall enter their appearances at the beginning of the hearing by giving their names and addresses and stating their position and representation, or interest, in writing to the presiding officer, who will include the same in the records of the hearing. The presiding officer conducting the hearing may, in addition, require appearances to be stated orally, so that the identity and interest of all parties present will be known to those at the hearing. (1-3-94)

03. Notice. All notices, pleadings, and orders may be served upon such attorneys or representatives entering an appearance, and such service shall be considered valid service for all purposes upon the party represented. (1-3-94)

04. Practice by Attorneys and Appearance. Practice and appearance before the agency will be limited to attorneys admitted to practice law in the state of Idaho, except that an attorney not admitted in the state of Idaho but admitted to practice before the highest court of any other state or any federal court may appear and practice when associated with an attorney admitted to practice in the state of Idaho. (1-3-94)

05. Change of Counsel. No change of counsel or representation will be effective until notification of such change is received by the agency or presiding officer. (1-3-94)

151. -- 199. (RESERVED).

200. INTERVENTION.

01. Leave to Intervene Necessary. Persons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, shall secure an order from the agency or presiding officer granting leave to intervene before being allowed to participate; provided, that the granting of leave to intervene or otherwise appear, in any matter or proceeding, shall not be construed to be a finding or determination of the agency that such party will or may be a party aggrieved by any ruling, order or decision of the agency, for purposes of court review or appeal. (1-3-94)

02. Form and Content of Petitions. Petitions for leave to intervene must be in writing and must clearly identify the proceeding in which it is sought to intervene, setting forth the name and address of the petitioner, making a clear and concise statement of the direct and substantial interest of the petitioner in such proceeding, stating the manner in which such petitioner will be affected by such proceeding, outlining the matters relied upon by such petitioner as a basis for the petitioner's request to intervene in such cause, and if affirmative relief is sought, the

petition must contain a clear and concise statement of relief sought and the basis thereof, together with a statement as to the nature and quantity of evidence the petitioner will present if such petition is granted. (1-3-94)

03. Filing of Petitions. Petitions to intervene and proof of service of copy thereof on all other parties of record shall be filed within five (5) days after receiving notice of the proceeding, or if no notice is received, not less than five (5) days prior to the date set for hearing, and if filed thereafter, shall state a substantial reason for such delay; otherwise such petition will not be considered. (1-3-94)

201. -- 249. (RESERVED).

250. PLEADINGS.

01. Pleadings Enumerated. Pleadings before the agency shall be styled after those provided in the Idaho Rules of Civil Procedure. (1-3-94)

02. Verification. All pleadings, except those made by the agency, shall be verified. (1-3-94)

03. Form and Size. Pleadings or briefs submitted under these rules shall be typewritten, or process printed, properly titled, and shall be signed by the appropriate authorized individual or officer submitting the same and bear his or her address. All pleadings shall be on paper approximately eight and one-half by eleven (8 1/2 x 11) inches in size, and shall set forth a clear and concise statement of the matters relied upon as a basis for such pleading, together with an appropriate prayer, when relief is sought. (1-3-94)

04. Defective Pleadings-Dismissal. Upon the filing of any pleading, it will be inspected by the agency and if found to be defective or insufficient, the agency, on its own initiative, or on motion of any party, may strike or dismiss such document or require its amendment. (1-3-94)

05. Amendments to Pleadings. A pleading may be amended only by leave of the agency or the presiding officer. (1-3-94)

06. Applications. All pleadings requesting a right or authority from the agency shall be styled "Applications". They must set forth the full name and mailing address of the applicant, and must contain fully the facts on which the application is based, with required exhibits, and a request for the order, authorization, permission, certificate or permit desired and a reference to the particular provision of law requiring or providing the same. The application shall be signed by the applicant or the applicant's attorney, if any. (1-3-94)

07. Petitions. All pleadings praying for affirmative relief (other than complaints or answers) including requests to be permitted to intervene in proceedings, or for rehearing, shall be styled "Petitions." (1-3-94)

08. Petitions for Reconsideration. Petitions for reconsideration shall set forth specifically the ground or grounds upon which the petitioner considers the order to be unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence such petitioner will offer if reconsideration is granted. Such petitions shall be filed with the agency within the time limit prescribed in Subsection 550.01. (1-3-94)

09. Answers. Whenever a complaint is filed with the agency, setting forth a violation or omission by any party subject to agency jurisdiction, the respondent shall satisfy or answer the complaint. A party against whom a petition is directed who desires to contest the same or make any representation to the agency in connection therewith may file an answer thereto. Answers shall be filed with the agency within the time limit prescribed in Subsection 300.05. Answers shall be so drawn as to advise the agency and all parties of record fully and completely of the nature of such material allegations of the complaint or petition. Matters alleged by way of cross complaint or affirmative defense shall be separately stated and numbered. In case a party fails to answer within the prescribed time, that party shall be deemed to have denied generally the allegations of the complaint or petition, and shall be precluded except with the consent of opposing parties and the agency from setting up any affirmative defense in the proceeding, and the agency may proceed with the matter solely upon the issues set forth in the complaint or petition, or issue a notice of default, or continue the matter to a future date under the provisions of Subsection 400.16. (1-3-94)

10. Motions--Defined--Form and Contents--Time for Filing. (1-3-94)

a. Motions Defined. All other pleadings requesting the agency to take any other action in a contested case, except consent orders or pleadings specifically answering other pleadings, are called "motions." (1-3-94)

b. Form and Contents. The practice respecting motions and forms shall conform insofar as practicable with the Idaho Rules of Civil Procedure. Motions should fully state the facts upon which they are based, refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based, and state the relief sought. (1-3-94)

c. Oral Argument -- Time for Filing. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 250.11. (1-3-94)

11. Procedure on Prehearing Motions. The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond. (1-3-94)

12. Formal Complaints. Formal complaints are those complaints filed under the provisions of the applicable law. Formal complaints must be in writing and shall set forth clearly and concisely the ground of complaint and a statement of the facts. Facts constituting acts or omissions, together with citations, statutes or rules of the agency involved, should be stated, together with the dates on which the acts or omissions occurred. The name of the person complained against must be stated in full, and the address of the complainant, together with the name and address of the complainant's attorney, if any, must appear upon the complaint. (1-3-94)

13. Hearings on Complaints. Formal complaints will be set for hearing at the earliest convenience of the agency, unless notice of satisfaction of the complaint, by answer or otherwise, is received by the agency. (1-3-94)

251. -- 299. (RESERVED).

300. FILING AND SERVICE.

01. Filing of Pleadings. An original and two (2) legible copies of all pleadings shall be filed with the agency. The agency or the presiding officer may direct that a copy of all applications, petitions, complaints and other pleadings designated by the agency be served by the party filing the pleadings on any person whom the agency determines may be affected by the proceedings. (1-3-94)

02. Service Upon Agency. All pleadings, written communications, and documents that are intended to be part of an official record for a decision in a contested case must be filed with the agency. Documents are deemed to be filed when received during office hours, by the legal bureau at the central office of the agency or by the designated individual member of agency staff, and not when mailed, faxed or otherwise sent. (1-3-94)

03. Service by Agency. Service of summons and complaint shall be made in accordance with the Idaho Rules of Civil Procedure. The agency may serve all notices, orders, and other documents, by certified mail, return receipt requested, to a party's last known mailing address, or by hand delivery, or by personal service, or by fax during office hours. Service by the agency shall be deemed complete when a true copy of such notice, order, or other document, properly addressed and stamped, is deposited in the United States Mail, or is personally served, or is delivered by hand, or is sent by fax during business hours. (1-3-94)

04. Proof of Service. There shall appear on the original of every pleading filed with the agency proof of service thereof by an acknowledgment of service or the following certificate:

I hereby certify that I have this day served the foregoing document upon all parties of

record in this proceeding, by delivering a copy thereof in person to
by mailing a copy thereof, properly addressed with postage prepaid to

Dated at,
This day of, 19

Signature

(1-3-94)

05. Time for Filing Answers. Answers to complaints or petitions shall be filed with the agency and service thereof made to parties of record within twenty (20) days after service of said complaint or petition, unless for good cause, the agency or the presiding officer extends the time within which the answer may be made. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to rule 500.03. (1-3-94)

301. DISCOVERY.

01. Kinds of Discovery. The kinds of discovery recognized and authorized by these rules in contested cases are: (1-3-94)

- a. Depositions; (1-3-94)
- b. Production requests or written interrogatories; (1-3-94)
- c. Requests for admission; (1-3-94)
- d. Subpoenas; and (1-3-94)
- e. Statutory inspection, examination, or investigation. (1-3-94)

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (1-3-94)

03. When Discovery Authorized. Parties may agree between or among themselves to provide for discovery without reference to an agency's statutes, rules of procedure, or orders. Otherwise no party before the agency is entitled to engage in discovery unless the party moves to compel discovery and the agency issues an order directing that the discovery be answered. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, or investigation at any time without filing a motion to compel discovery. (1-3-94)

04. Rights to Discovery Reciprocal. All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 301.03 and to the authorizing statutes and rules. The presiding officer may by order, authorize, or compel necessary discovery authorized by statute or rule. (1-3-94)

05. Depositions. Depositions shall be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (1-3-94)

06. Production Requests or Written Interrogatories and Requests for Admission. Production requests or written interrogatories and requests for admission shall be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (1-3-94)

07. Subpoenas. The agency may issue subpoenas upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (1-3-94)

08. Statutory Inspection, Examination, Investigation -- Contrasted With Other Discovery. This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination or investigation. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination or investigation may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. (1-3-94)

09. Answers to Production Requests or Written Interrogatories and to Requests for Admission. Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers shall conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. (1-3-94)

10. Filing and Service of Discovery-Related Documents. Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 301.09, and objections to discovery shall be filed and served as provided in the order compelling discovery. (1-3-94)

11. Prepared Testimony and Exhibits. Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. (1-3-94)

12. Sanctions for Failure to Obey Order Compelling Discovery. The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (1-3-94)

13. Protective Orders. As authorized by statute or rule, the agency may issue protective orders limiting access to information revealed, requested or obtained during settlement negotiations, discovery, or hearing. (1-3-94)

302. INFORMAL PROCEDURE.

01. Informal Resolution Authorized. These rules encourage the use of informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person, at the discretion of the agency. (1-3-94)

02. Informal Proceedings Do Not Exhaust Administrative Remedies. Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceedings are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential and shall not be included in the agency record of a later formal proceeding. (1-3-94)

303. -- 349. (RESERVED).

350. PREHEARING CONFERENCES.

01. General. The agency may, upon written notice to all interested parties, hold a prehearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and documents, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, and determining procedure at the hearing, and other matters which may expedite the orderly conduct and disposition of the issues. (1-3-94)

02. Action Taken. After the prehearing conference, the presiding officer shall enter an order which

recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of the parties; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent injustice. (1-3-94)

03. Recessing Hearing for Conference. In any proceeding the presiding officer may, in the officer's discretion, call all parties together for a conference prior to the taking of testimony, or may recess the hearing for such conference, with the view of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference. (1-3-94)

351. -- 399. (RESERVED).

400. HEARINGS.

01. Place and Time. Notice of the place, date and hour of the hearing will be served at least twenty (20) days before the time set therefor, unless the agency shall find that public necessity requires the hearing to be held at an earlier date. Hearings will be held at the central office of the agency unless otherwise determined by the agency. (1-3-94)

02. Failure to Appear. At the time and place set for hearing, if any party fails to appear, the agency may, with or without prejudice, dismiss the petition, application or complaint, may serve upon all parties a notice of a proposed default order, or may, upon good cause shown, recess said hearing for a further period to be set by the agency to enable said party to attend. Any and all costs incurred by reason of a party's non-appearance shall be assessed against the non-appearing party and no proceeding or action instigated by the non-appearing party shall be entertained by the agency until the assessed costs are paid. (1-3-94)

03. Conduct at Hearings. All parties, counsel, and other persons, will conduct themselves in a respectful manner. The presiding officer may expel a person from an agency proceeding if that person engages in conduct that disrupts the proceeding. (1-3-94)

04. Testimony Under Oath. All testimony presented in formal hearings will be given under oath. Before testifying, each witness must swear or affirm that the testimony the witness will give before the agency is the whole truth, and nothing but the truth. (1-3-94)

05. Order of Procedure. Subject to the special procedure required by Section 700, applicants, petitioners, or complainants shall present their evidence, and then such parties as may be opposing the application, petition, or complaint, shall submit their proof. The presiding officer shall determine the order in which the protestants shall introduce their evidence. Intervenors shall follow the party on whose behalf the intervention is made. If the intervention is not in support of either original party, the presiding officer shall designate at which stage such intervention shall be heard. Evidence will ordinarily be received in the following order: (1-3-94)

- a. Upon applications and petitions: (1-3-94)
 - i. Applicant or petitioner. (1-3-94)
 - ii. Agency staff. (1-3-94)
 - iii. Intervenors or protestants. (1-3-94)
 - iv. Rebuttal by applicant or petitioner. (1-3-94)
- b. Upon formal complaints: (1-3-94)
 - i. Complainant. (1-3-94)
 - ii. Respondent. (1-3-94)

- iii. Agency staff. (1-3-94)
- iv. Rebuttal by complainant. (1-3-94)
- c. Upon complaints by agency and orders to show cause: (1-3-94)
 - i. Agency staff or agency representatives. (1-3-94)
 - ii. Respondent. (1-3-94)
 - iii. Rebuttal by agency staff or agency representatives. (1-3-94)
 - d. The aforementioned procedure may be modified at the discretion of the agency or presiding officer. (1-3-94)
- 06. Consolidation. The agency may consolidate two (2) or more proceedings in any one (1) hearing where it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by such procedure. Where two (2) or more proceedings are consolidated for hearing, the presiding officer shall determine the order in which all the parties shall introduce their evidence and which party or parties shall open and close. (1-3-94)
- 07. Limits of Intervenors and Protestants. Where two (2) or more intervenors or protestants have substantially the same interests and positions, the presiding officer may, at any time before or during the hearing, if the officer deems it advisable in order to expedite the proceedings, limit the number of intervenors or protestants who will be permitted to testify, cross-examine witnesses, or to make and argue motions and objections. (1-3-94)
- 08. Stipulations. With the approval of the presiding officer, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral statement shown upon the record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the agency as evidence at the hearing; however, the agency may require proof of the facts set forth in the stipulation. (1-3-94)
- 09. Rules of Evidence. The admission of evidence before the agency shall be governed by Section 67-5251, Idaho Code. (1-3-94)
- 10. Evidentiary Rulings. The presiding officer shall rule on the admissibility of all evidence, subject to the requirements of Subsection 400.09. (1-3-94)
- 11. Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. (1-3-94)
- 12. Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objections have been sustained. (1-3-94)
- 13. Prepared Testimony. With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer, the reporter and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial savings in time will result, and where the parties so agree, prepared testimony may be copied into the record without reading, provided that copies thereof shall have been served upon all parties and the agency ten (10) days before the hearing or such prior service is waived in writing. (1-3-94)
- 14. Continuances. The agency or the presiding officer additional proof of any subject matter. (1-3-94)
- 15. Briefs. In any hearing, the agency or the presiding officer may order briefs to be filed within such time as may be allowed. An original and two (2) copies of briefs shall be filed at the central office of the agency or as otherwise directed by the presiding officer and shall be accompanied by an acknowledgment of service or an affidavit showing service on other parties of record. (1-3-94)

16. Official Notice. The agency or the presiding officer may take official notice subject to the provisions of Section 67-5251 (4), Idaho Code, of the following matters: (1-3-94)

- a. Rules, regulations, official reports, decisions and orders of any agency, state or federal. (1-3-94)
- b. Contents of decisions, orders, certificates and permits issued by the agency. (1-3-94)
- c. Matters of common knowledge and technical or scientific facts of established character. (1-3-94)
- d. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference; provided, however, that proper and definite identification of such document shall be made by the party offering the same and that the same is published and generally circulated so that an opportunity shall be given to all of the parties of interest in the hearing to examine the same and present rebuttal evidence. (1-3-94)

17. Open Hearings. All hearings conducted by the agency shall be open to the public unless precluded by law. (1-3-94)

401. -- 499. (RESERVED).

500. DECISION AND ORDERS.

01. Submission of Decisions. A proceeding shall stand submitted for decision by the agency after the taking of evidence or the filing of briefs or the presentation of oral argument as may have been prescribed by the agency or the presiding officer, unless otherwise specifically provided. (1-3-94)

02. Proposed Orders. When a case stands submitted for final decision on the merits, the agency shall decide the issue presented thereby and issue a final decision including findings of fact and conclusions of law. The agency may, in its discretion, request proposed findings of fact from each party. Where the presiding officer submits a recommended or preliminary order, such order may be reviewed by the agency, pursuant to Sections 67-5243, 67-5244, and 67-5245, Idaho Code, in determining the matter on its merits. (1-3-94)

03. Default Orders. (1-3-94)

a. If an applicant, petitioner, complainant, respondent, or moving party fails to appear at the time and place set for hearing on an application or claim, petition, complaint, or motion, the presiding officer may serve upon all parties a notice of a proposed default order. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant, petitioner, complainant, respondent, or moving party to appear at the time and place set for hearing. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (1-3-94)

b. Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that a default order should not be entered. (1-3-94)

c. The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. (1-3-94)

04. Consent Orders--Defined--Form and Contents. (1-3-94)

a. Consent Orders Defined. Agreements between the agency or agency staff and another person(s) in which one or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of the law, are called "consent orders". Consent orders are intended to require compliance with existing law. (1-3-94)

b. Requirements. Consent orders must recite the parties to the agreement, and fully state the conduct proscribed or prescribed by the consent order. (1-3-94)

c. Additional. In addition, consent orders may recite the consequences of failure to abide by the consent order, provide for payment of civil or administrative penalties authorized by law, provide for loss of rights, licenses, awards or authority, provide for other consequences as agreed to by the parties, and provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent order. (1-3-94)

05. Service of Orders. Parties shall be notified either personally or by certified mail of any order. Copies of the order shall be served on all parties. (1-3-94)

501. -- 549. (RESERVED).

550. PETITIONS FOR RECONSIDERATION.

01. Time for Filing. Any party to a proceeding who is directly and substantially affected by the order of the agency may apply for reconsideration within fourteen (14) days after service of the order. Petitions for reconsideration shall, as to form and content, conform to the requirements of Subsection 250.08, and filing and service thereof shall conform to the requirements set forth in Section 300. (1-3-94)

02. Stay of Order. The petition may include a request for a stay of a final order. (1-3-94)

03. Effect of Filing. The filing of a petition for reconsideration shall not excuse compliance with the final order nor suspend the effectiveness of such order unless a stay has been granted. (1-3-94)

04. Answer to Petition. Within ten (10) days after a petition for reconsideration is filed, any party to the proceeding may file an answer in support of or in opposition to the petition. The filing of an answer to a petition for reconsideration will not toll the twenty-one (21) day time period set forth in Section 67-5246(4), Idaho Code. (1-3-94)

05. Hearing on Reconsideration. The agency may, at its discretion, hold a hearing on a petition for reconsideration. Such hearing, if held, will be held in conformance with the procedural rules governing hearings. (1-3-94)

551. -- 599. (RESERVED).

600. MISCELLANEOUS PROVISIONS.

01. Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a holiday, and then it is excluded. (1-3-94)

601. -- 699. (RESERVED).

700. HEARING PROCEDURE FOR ADOPTION OF RULES.

01. Hearing. The hearing to consider a rule shall be conducted by and shall be under the control of the presiding officer. (1-3-94)

02. Conflict of Interest. If the presiding officer or any decision maker has a potential conflict of interest as defined in Section 59-703(4), Idaho Code, that officer shall comply with the requirements of the Ethics in Government Act of 1990, Sections 59-701 through 59-706, Idaho Code. (1-3-94)

03. Witnesses. At the commencement of the hearing, any person wishing to be heard shall provide name and address to the presiding officer. Additional persons may be heard at the discretion of the presiding officer. The presiding officer may provide an appropriate form for listing witnesses which shall indicate the name of the

witness, and such other information as the presiding officer may deem appropriate. (1-3-94)

04. Content of Notice. At the commencement of the hearing, the presiding officer may summarize the content of the notice provided pursuant to Section 67-5221, Idaho Code, unless requested by a person present to read the notice in full. (1-3-94)

05. Order of Presentation. Subject to the discretion of the presiding officer, the order of the presentation shall be: (1-3-94)

a. Statement of proponents; (1-3-94)

b. Statement of opponents; and (1-3-94)

c. Statements of any other witness present and wishing to be heard. (1-3-94)

06. Examination of Witnesses. The presiding officer or any member of the agency may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses. (1-3-94)

07. Rebuttals. There shall be no rebuttal or additional statements given by any witness unless requested or permitted by the presiding officer. The presiding officer may allow an opportunity for reply. (1-3-94)

08. Continuances. The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses have had an opportunity to testify. (1-3-94)

09. Physical and Documentary Evidence. The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Each exhibit shall be marked and shall identify the witness offering the exhibit. Any written exhibits shall be preserved by the agency pursuant to any applicable retention schedule for public records. (1-3-94)

10. Time Limits. The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. (1-3-94)

701. -- 999. (RESERVED).