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**IDAPA 46
TITLE 01
Chapter 02**

**46.01.02 - RULES OF PRACTICE AND PROCEDURE
OF THE IDAHO STATE BOARD OF VETERINARY MEDICAL EXAMINERS**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 54-2105(5)(1), Idaho Code. (12-31-93)

001. TITLE AND SCOPE:

The title of this chapter is Idaho Rules of Practice and Procedure of the Idaho State Board of Veterinary Medical Examiners. This chapter has the following scope: These rules shall govern all practice and procedure before the Idaho State Board of Veterinary Medical Examiners, hereinafter referred to in these rules as the agency. The official citation of this chapter is IDAPA 46.01.02000 et. seq. For example, this section's citation is IDAPA 46.01.02001. (12-31-93)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (12-31-93)

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeals before the State Board of Veterinary Medical Examiners under this chapter. (12-31-93)

004. DEFINITIONS.

The Idaho State Board of Veterinary Medical Examiners adopts the definitions set forth in Section 67-5201, Idaho Code. (12-31-93)

005. -- 009. (RESERVED).

010. PRESIDING OFFICER.

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 President of the state Board of Veterinary Medicine, or any other person designated by the President of the Board of Veterinary Medicine or designated by statute. (12-31-93)

011. -- 049. (RESERVED).

050. GENERAL PROVISIONS.

01. Office. (12-31-93)
 - a. The central office of the agency is in Boise, Idaho. The address is the Idaho State Board of Veterinary Medical Examiners, 2270 Old Penitentiary Road, Boise, Idaho 83712. (12-31-93)
 - b. The mailing address for the central office is P.O. Box 7249, Boise, Idaho 83707. (12-31-93)
 - c. The telephone number of the central office is (208) 334-3962. (12-31-93)
 - d. 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. (12-31-93)
02. Communications. All written communications and documents concerning any matter covered by these rules should be addressed to the central office of the Board of Veterinary Medicine, and not to individual members of the Board or the Board's Staff. All communications and documents are deemed to be officially received only when delivered to the central office of the agency during office hours. (12-31-93)
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. (12-31-93)

04. Transcript. The official transcript of the hearing will be taken in accordance with the provisions of Section 67-5242(3)(d), Idaho Code. (12-31-93)

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. (12-31-93)

02. Applicant. Persons applying or petitioning for any right or authority from the agency shall be styled "applicants". (12-31-93)

03. Petitioner. Persons petitioning for a hearing or reconsideration under Sections 67-5230, 67-5232, Idaho Code, or for affirmative relief (other than complainants) shall be styled "petitioners". (12-31-93)

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". (12-31-93)

05. Respondent. Persons against whom any complaint is filed or investigation initiated shall be styled "respondents". (12-31-93)

06. Intervenor. Persons permitted to intervene, as provided in these rules, shall be styled "intervenors". (12-31-93)

07. Protestant. Persons opposing applications or petitions shall be styled "protestants". (12-31-93)

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. (12-31-93)

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/or 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. (12-31-93)

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 minutes 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. (12-31-93)

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. (12-31-93)

04. Former Employees. No former employee of the agency may, at any time after severing employment with the agency, appear, except with the written permission of the agency, in a representative capacity on behalf of other parties in a formal proceeding wherein the employee previously took an active part as a representative of the agency. (12-31-93)

05. Expert Witnesses. No former employee of the agency shall, at any time after severing employment with the agency, appear, except with the written permission of the agency, as an expert witness on behalf of other parties in a formal proceeding where the employee previously took an active part in the investigation or preparation as a representative of the agency. (12-31-93)

06. Practice by Attorneys and Appearance. Practice and appearance before the agency will be limited to attorneys admitted to practice 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. (12-31-93)

07. 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. (12-31-93)

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. (12-31-93)

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. (12-31-93)

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. (12-31-93)

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. (12-31-93)

02. Verification. All pleadings, except those made by the agency, shall be verified. (12-31-93)

03. Form and Size. Pleadings or briefs submitted under these rules shall be typewritten, or process printed, properly entitled 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 (8 1/2) by eleven (11) inches in size, and shall state the name and address of each party thereof, shall clearly identify the proceedings 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. (12-31-93)

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. (12-31-93)

05. Amendments to Pleadings. A pleading may be amended only by leave of the agency or the presiding officer. (12-31-93)

06. Applications. All pleadings requesting a right or authority from the agency shall be styled "Applications". They must set forth the full name and post office 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. (12-31-93)

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". (12-31-93)

08. Petitions for Reconsideration. Petitions for Reconsideration shall set forth specifically the ground or grounds upon which the petitioner considers the order, decision, rule, direction, or regulation 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. (12-31-93)

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 shall proceed with the matter solely upon the issues set forth in the complaint or petition, unless the matter is continued to a future date under the provisions of Subsection 400.16. (12-31-93)

10. Protests. A person who may be adversely affected by the granting of an application or petition or by a rate or time schedule becoming effective, shall have the right to file their written protest with the Board or hearing officer and in the discretion of the Board or hearing officer, be heard as a protestant, without written pleadings. Protestants are not entitled, as a matter of right, to a formal hearing upon the matter being protested, but protests may contain a request for a formal hearing. The Board may, whether or not a protest contains such request, set the matter in question for formal hearing. In such case, the Board shall serve a copy of the protest upon the applicant or petitioners, or other party, at the time of giving notice of hearing. (12-31-93)

11. Motions. Motions shall be filed with the agency within the time limit prescribed in Subsection 300.06. Motions may be submitted for the agency's decision on either written or oral argument as determined by the agency or presiding officer, and the filing of affidavits in support or contravention thereof may be permitted. The practice respecting motions and forms thereof shall conform insofar as practicable with the Idaho Rules of Civil Procedure. (12-31-93)

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 such 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. 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. (12-31-93)

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. (12-31-93)

14. Miscellaneous Petitions. When the subject matter of any desired relief is not specifically covered by these rules, a petition seeking such relief and stating the reason therefor may be filed, and will be handled in the

same manner as other applications or petitions. (12-31-93)

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. Special requirements for proceedings initiated pursuant to Sections 67-5230 and 67-5232, Idaho Code, are contained in Section 650 of this chapter. (12-31-93)

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, or in a proceeding held on a petition filed under Section 67-5230 or 67-5232, Idaho Code, must be filed with the agency. Documents are deemed to be filed when received by the central office of the agency during office hours, and not when mailed, faxed or otherwise sent. (12-31-93)

03. Service by New 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 being sent 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 office hours. (12-31-93)

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

(12-31-93)

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. (12-31-93)

06. Time for Filing Motions. Any motion directed toward a complaint or petition must be filed before the answer is due, otherwise such objection must be raised in the answer. If a motion is directed towards an answer, it must be filed within ten (10) days of the service of the answer. Other motions must be timely filed. (12-31-93)

301. -- 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 of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limitation of number of witnesses, and consolidation of the examination of witnesses procedure at the hearing, and such other matters which may expedite the orderly conduct and disposition of the proceedings or settlements thereof. (12-31-93)

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. (12-31-93)

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. (12-31-93)

351. -- 399. (RESERVED).

400. HEARINGS.

01. Place and Time. Hearing will be held before the agency or agency members who are to render the decision thereon and a presiding officer appointed by the agency. 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. (12-31-93)

02. Failure to Appear. At the time and place set for hearing, if any party fails to appear, the agency or the presiding officer may, with or without prejudice, dismiss the petition, application or complaint, enter a 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. (12-31-93)

03. Preliminary Procedure. The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motions or petitions. The parties may then make opening statements as they may desire. (12-31-93)

04. Conduct at Hearings. All parties to hearings, their 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. (12-31-93)

05. 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 truth, the whole truth, and nothing but the truth. (12-31-93)

06. Order of Procedure. Subject to the special procedure required by Sections 650. and 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 protestants shall introduce their evidence. Intervenors shall follow the party in 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: (12-31-93)

- a. Upon applications and petitions: (12-31-93)
 - i. Applicant or petitioner. (12-31-93)
 - ii. Agency staff. (12-31-93)
 - iii. Intervenors or protestants. (12-31-93)
 - iv. Rebuttal by applicant or petitioner. (12-31-93)

- b. Upon formal complaints: (12-31-93)
 - i. Complainant. (12-31-93)
 - ii. Respondent. (12-31-93)
 - iii. Agency staff. (12-31-93)
 - iv. Rebuttal by complainant. (12-31-93)
- c. Upon complaints by agency and orders to show cause: (12-31-93)
 - i. Agency staff. (12-31-93)
 - ii. Respondent. (12-31-93)
 - iii. Rebuttal by agency staff. (12-31-93)
- d. The aforementioned procedure may be modified at the discretion of the agency or presiding officer. (12-31-93)

07. 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. (12-31-93)

08. 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. (12-31-93)

09. 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. (12-31-93)

10. Rules of Evidence. The admission of evidence before the agency shall be governed by Section 67-5251, Idaho Code. (12-31-93)

11. Evidentiary Rulings. The presiding officer shall rule on the admissibility of all evidence, subject to the requirements of Subsection 400.09. (12-31-93)

12. Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. (12-31-93)

13. 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. (12-31-93)

14. Prepared Testimony. With the approval of the presiding officer, a witness may read into the record his testimony 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. (12-31-93)

15. Subpoenas. Subpoenas requiring the attendance of a witness from any place in the state to any designated place of hearing for the purpose of taking testimony of such witness orally before the agency or presiding officer or one or more agency members, may be issued by the presiding officer upon application in writing. The presiding officer may, as a condition of issuing a subpoena, require the party applying therefore to prepay fees of the witness. Subpoena for the production of books, way-bills, papers, accounts or other documents, unless directed to issue by the presiding officer on its own motion, will be issued only upon application in writing, which application must specify, as clearly as may be, the books, way-bills, papers, accounts or other documents desired. The agency or presiding officer, 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. (12-31-93)

16. Depositions. The agency or presiding officer or any party may, in any investigation or hearing before the agency, cause the deposition of witnesses present or residing within the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state and to that end may compel the attendance of witnesses and the production of documents. (12-31-93)

17. Continuances. The agency or the presiding officer may, either prior to hearing or during a hearing, and on proper showing, grant continuances for submission of further or additional proof of any subject matter. (12-31-93)

18. 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 with the agency at the central office of the agency and shall be accompanied by an acknowledgement of/or an affidavit showing service on other parties of record. (12-31-93)

19. 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: (12-31-93)

- a. Rules, regulations, official reports, decisions and orders of any regulatory agency, state or federal. (12-31-93)
- b. Contents of decisions, orders, certificates and permits issued by the agency. (12-31-93)
- c. Matters of common knowledge and technical or scientific facts of established character. (12-31-93)
- 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. (12-31-93)
- e. Opportunity to contest matters noticed shall be afforded all parties. (12-31-93)

20. Open Hearings. All hearings conducted by the agency shall be open to the public unless precluded by law. (12-31-93)

21. Rulings. The presiding officer shall rule on the admissibility of all evidence, subject to the requirements of Rule 400 and 500. Such rulings may be reviewed by the agency in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the agency is necessary to promote substantial justice, the presiding officer may refer the matter to the agency for determination. Any ruling may be deferred to the entire agency by the presiding officer or taken under advisement by the presiding officer. (12-31-93)

22. Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. (12-31-93)

23. Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained. (12-31-93)

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. (12-31-93)

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 President of the State Board of Veterinary Medical Examiners pursuant to Sections 67-5243, 67-5244, and 67-5245, Idaho Code, in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the agency is necessary to promote justice, the presiding officer may refer the matter to the President of the State Board of Veterinary Medical Examiners for determination. (12-31-93)

03. Default Orders. (12-31-93)

a. When the agency has given a party an opportunity to request a hearing and the party fails to make a request within a specified time, or when the agency has set a specified time and place for a hearing and the party fails to appear at the specified time and place, the agency may enter a final order by default. (12-31-93)

b. The agency may issue an order of default only after making a prima facie case on the record. The record may be made at an agency meeting, at a scheduled hearing on the matter, or, if the notice of intended action states that the order will be issued or become effective upon the failure of the party to timely request a hearing, when the order is issued. (12-31-93)

c. If the notice of intended action contains an order that is to become effective unless the party requests a hearing, the record shall be complete at the time of the notice of intended action. (12-31-93)

d. The record may consist of oral (transcribed, recorded, or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact. (12-31-93)

e. When the agency has set a specified time and place for a hearing in a matter in which only one (1) party is before the agency and that party subsequently notifies the agency that the party will not appear at such specified time and place, the agency may enter a default order, cancel the hearing, and follow the procedure described in Sections 500.03.b and d. (12-31-93)

f. When a party requests a hearing after the time specified by the agency, but before the agency has entered a default order, the agency may grant the request or make further inquiry as to the existence of the reasons specified in Section 500.03.g.i. for the request being tardy. If further inquiry is made, the agency may require an affidavit to be filed with the agency. The agency shall enter an order granting or denying the request as described in Section 500.03.g.v. (12-31-93)

g. When a party requests a hearing after entry of a default order, the party may request to be relieved from the default order only on grounds of mistake, inadvertence, surprise, or excusable neglect. (12-31-93)

i. The request shall be filed with the agency, and a copy delivered or mailed to all persons and agencies required by statute, rule, or order to receive notice of the proceeding, within a reasonable time. If the request is received more than seventy-five (75) days after delivery or mailing of a copy of the order of default to the party or the party's attorney, it shall be presumed that such a request is not timely. This presumption may be rebutted by evidence showing that the request is reasonably timely. (12-31-93)

ii. The request shall state why the party should be relieved from the default order. (12-31-93)

- iii. The agency may make further inquiry, including holding a hearing, as it deems appropriate. (12-31-93)
- iv. If the request is allowed by the agency, it shall enter an order granting the request and schedule a hearing in due course. If the request is denied, the agency shall enter an order setting forth its reasons for such denial. (12-31-93)
- h. The agency shall notify a defaulting party of the entry of a default order by delivering or mailing a copy of the order as required. (12-31-93)
- 04. Service of Orders. Parties shall be notified either personally or by certified mail of any decision or order. Copies of the decision or order shall be served on all parties. (12-31-93)
- 05. Public Inspection. Decisions and orders of the agency shall be open to public inspection unless precluded by law. (12-31-93)

501. -- 549. (RESERVED)

550. PETITIONS FOR RECONSIDERATION.

- 01. Time for Filing. Any party to a proceeding and 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. (12-31-93)
- 02. Stay of Order. The petition may include a request for stay of a final order. (12-31-93)
- 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. (12-31-93)
- 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. (12-31-93)
- 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. (12-31-93)

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. (12-31-93)
- 02. Additional Information. Additional information with reference to proceedings before an agency or the status of any matter may be secured by apply to the agency. (12-31-93)

601. -- 649. (RESERVED).

650. PROCEDURE UNDER SECTIONS 67-5230 AND 67-5232, IDAHO CODE.

- 01. Petitioner. An interested person or persons filing a petition under Section 67-5230, Idaho Code, or Section 67-5232, Idaho Code, will be denominated the petitioner. (12-31-93)

02. Substance. The petition will be substantially as follows:

**BEFORE THE STATE BOARD OF VETERINARY MEDICAL EXAMINERS,
STATE OF IDAHO**

Petition of

Petition of

(Name of Petitioner)

(Promulgation, Amendment or
Repeal or Declaratory Ruling,
whichever is appropriate)

(12-31-93)

03. Paragraph Format. All paragraphs of the petition will be numbered and centered on the page. (12-31-93)
04. First Paragraph. The first paragraph will outline the interest of the petitioner in the matter. (12-31-93)
05. The Second Paragraph. The second paragraph shall: (12-31-93)
- a. Describe the nature of the rule urged to be promulgated and the petitioner's suggested rule; or in the case of amendment the citation of the rule desired to be amended and the petitioner's suggested amendment; or in the case of repeal the citation of the rule; or (12-31-93)
- b. In proceedings under Section 67-5232, Idaho Code, indicate the rule, statute or order which the petitioner feels is applicable to the petitioner's situation. (12-31-93)
06. Third Paragraph. The third paragraph will commence the factual allegations asserted by the petitioner in support of the petitioner's position to promulgate, amend or repeal the petitioner's claim for declaratory ruling. (12-31-93)
07. Petitioner's Legal Assertion. Immediately following the factual allegations will be the petitioner's legal assertion in respect to the petitioner's position for promulgation, amendment or repeal of the petitioner's claim for declaratory ruling. (12-31-93)
08. Citations and/or Statutory Provisions. All legal assertions must be accompanied by citations of cases and/or statutory provision supporting the petitioner's legal contentions. (12-31-93)
09. Briefs. Briefs may be submitted in support of any contentions made by the petitioner and all documents, data and exhibits which petitioner wishes to have considered shall accompany the petition. Documents, data and exhibits filed after the petition will not be considered. All documents, data and exhibits will be numbered consecutively beginning with the number 1. (12-31-93)
10. Date and Signature. The Petition will be dated and signed by the petitioner and the petitioner's signature will be acknowledged. (12-31-93)
11. Certificate of Filing. Upon filing of the petition, a certificate of filing indicating the time and date of filing and listing by number, the exhibits, documents and other data, including briefs, signed by the person accepting filing and indicating the position or title, will be delivered to the petitioner. The original will be kept with the agency and a copy, certified as provided in this rule, delivered to the petitioner. (12-31-93)

12. Copies of Petition. There shall be filed with the central office of the agency the original and two (2) copies of the petition and related documents, one of which copies will be certified and returned to the petitioner. (12-31-93)

13. Affidavits. All factual matters set out in the petition should be detailed with affidavits accompanying the petition. (12-31-93)

14. Section 67-5232 Matters. In the discretion of the agency, Idaho Code, Section 67-5232 matters may be set for rule making or proceedings under Idaho Code, Section 67-5230. (12-31-93)

651. -- 699. (RESERVED).

700. HEARING PROCEDURE FOR ADOPTION OF RULES.

01. Roster. At all hearings a sign-in roster will be kept at the entrance to the hearing room and all persons attending such hearing will sign the roster and such names will be included in the official record. (12-31-93)

02. Adoption. If the hearing is held for the adoption, amendment or repeal of procedural rules: (12-31-93)

a. The manner in which testimony and evidence may be presented, either orally or in writing, will be determined by the agency or the presiding officer and such determination will be set out in the notice of hearing; (12-31-93)

b. If only written testimony is deemed acceptable by the agency or the presiding officer, then such testimony and exhibits, documents and data must be submitted to the agency at least three (3) days prior to the date set for the hearing; (12-31-93)

c. If oral testimony is permitted, the manner of testifying and time allowable for oral presentation will lie in the discretion of the agency or the presiding officer and any exhibits, documents and data may be introduced during oral presentation. (12-31-93)

03. Oral and Written Testimony. If both oral and written testimony are permitted by the agency or presiding officer: (12-31-93)

a. Such will be set out in the notice of hearing, and the conduct of the hearing, order of business, and time allotted for oral discussion, presentations and arguments will be in the sole discretion of the presiding officer; (12-31-93)

b. Any exhibits may, and statements and exhibits of persons unable to attend the hearing must be sent to the agency at least three (3) days prior to the hearing date. The presiding officer will have sole discretion as to whether to read the documents in to or summarize them for the transcript. In any event, they will become, in to, part of the record. (12-31-93)

04. Opportunity to Be Heard. In every hearing where oral discussion, argument or presentation is allowed, every person will be given the opportunity to be heard at least once prior to any person being heard for the second time. (12-31-93)

05. Oral and Written Statements. All oral and written statements, documents, evidence and testimony must be relevant to the topic of the hearing and the presiding officer will be the sole judge of such relevancy. (12-31-93)

06. Official Record. The official record of the hearing will contain a verbatim account of all oral testimony, argument and presentation, copies of exhibits and written evidence introduced, a list of all persons in attendance as taken from the sign-in roster, a certificate by the official hearing reporter as to the correctness of the record, and an affidavit executed by the presiding officer indicating the mode of public notice and the names of those persons notified pursuant to Section 67-5225 (2), Idaho Code, and any other matters directed to be included by these

rules. (12-31-93)

07. General Conduct. The presiding officer will be responsible for the general conduct of the hearing and will rule on all evidentiary matters and accept or reject exhibits offered in evidence. Exhibits will be identified by the presiding officer or court reporter and will indicate the date and name of the hearing, by whom the exhibit was introduced, and bear the initials of the presiding officer or court reporter. (12-31-93)

08. Other Hearings. In all hearings other than those conducted pursuant to Section 67-5230, Idaho Code, the agency, when proposing adoption, amendment or repeal of rules will present their position first and include a citation of authority for the adoption, amendment or repeal of rules. In those hearings conducted under Section 67-5230, Idaho Code, the petitioner will have the burden of first presenting the petitioner's position. After the first presentation, the order of presentation for the remainder of the hearing will be at the discretion of the presiding officer. (12-31-93)

09. Right to Question. The agency or presiding officer will have the opportunity to ask questions of those persons presenting oral and written testimony and exhibits, statements, documents and data for the purposes of further exploring and amplifying the evidence presented. (12-31-93)

10. Supplemental Evidence. The presiding officer, upon the officer's own motion or upon motion made by the agency or its staff, if granted, may request supplemental evidence from persons presenting testimony. Supplemental evidence will be submitted to the presiding officer no later than ten (10) days after the close of the hearing. At the expiration of the ten (10) day period, the presiding officer will prepare an affidavit indicating the acceptance or rejection of supplemental evidence or non-compliance with the presiding officer's request for supplemental evidence. The statements so accepted and the affidavit will become a part of the record of the hearing. (12-31-93)

11. Appointing Presiding Officer. The agency may appoint a presiding officer to conduct hearings pursuant to Title 67, Chapter 52, Idaho Code and these rules. (12-31-93)

12. Submission of Evidence. All evidence submitted under this rule must be submitted in written form. (12-31-93)

701. -- 799. (RESERVED).

800. PROCEDURE UNDER IDAHO CODE, SECTION 67-5203 (a) (1).

01. Advance Notice. All persons requesting advance notice of the agency's rule-making proceedings shall notify the agency by registered mail stating generally their interest in the agency rules. Such notification shall be renewed annually on the same date and in the same manner as the original. (12-31-93)

801. -- 999. (RESERVED).