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20.06.01 - Practice And Procedure For Contested Cases And Rulemaking Before The Idaho Board Of Scaling Practices

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**IDAPA 20
TITLE 06
Chapter 01**

**20.06.01 - PRACTICE AND PROCEDURE FOR CONTESTED CASES AND RULEMAKING
BEFORE THE IDAHO BOARD OF SCALING PRACTICES**

000. -- 010. (RESERVED).

011. PRESIDING OFFICER.

01. Presiding Officer. As used in these rules shall be the chairman of the State Board of Scaling Practices or his appointee or that person, persons, or agency appointed by the chairman to act as Presiding Officer for the purposes of conducting hearings and procedure under these rules. (10-18-84)

02. Docket Numbers. Every matter coming within the purview of these rules shall be assigned a docket number by the Presiding Officer, which shall be the official number for the purposes of identification. (10-18-84)

03. Interpretation. These Rules of Practice and Procedure are to be interpreted in conformity with Chapter 12 of Title 38 of the Idaho Code. (10-18-84)

012. -- 099. (RESERVED).

100. GENERAL PROVISIONS.

01. Procedure Governed. These rules shall govern all practice and procedure in formal hearings before the State Board of Scaling Practices, hereinafter referred to in these rules as the Board. (10-18-84)

02. Office. The central office of the Presiding Officer will be in Boise, Idaho. The Presiding Officer's address, unless otherwise indicated, will be Department of Lands, Statehouse Mail, 1215 W. State Street, Boise, Idaho 83720-7000. (10-18-84)

03. Communications. All written communications and documents concerning any matter covered by these rules shall be addressed to the Presiding Officer at the central office of the Board. All communications and documents are deemed to be officially received only when delivered at the central office of the Board. (10-18-84)

04. 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. (10-18-84)

05. Forms. All forms used by the Board will be included in the appendix to the substantive rules of the Board. (10-18-84)

06. Record. An official record shall be kept of all proceedings before the Board and reduced to writing. Such record shall be kept in bound or loose-leaf volumes and will be available for public inspection at the office of the State Board of Scaling Practices. Any party desiring to obtain a copy of the record of any proceeding must request such within ten (10) days before the date set for hearing. Such party shall pay all reasonable fees for preparation for such record. (10-18-84)

07. Transcript-Copies. Any person desiring a copy of the record of proceedings taken at any hearing must inform, in writing at least five (5) days prior to the hearing, the Presiding Officer. Upon completion of the record, the Presiding Officer shall notify the person requesting a copy of its completion and the fee for producing such record. Upon receipt by the Board of the amount of the fee in cash, certified check or money order, the Board will forward a copy of the record to the requesting party. (10-18-84)

101. (RESERVED).

102. PARTIES.

01. Classification Of Parties. Parties to proceedings before the Board shall be styled Applicant, Petitioner, Complainant, Respondent, Intervenor, or Protestant according to the nature of the proceedings and the relationship of the parties thereto. (10-18-84)

02. Applicant. Persons applying or petitioning for any right, license or authority from the Board shall be styled "Applicant". (10-18-84)

03. Petitioner. Persons petitioning for rehearing, or a hearing under Sections 67-5206, 67-5208, Idaho Code or for affirmative relief (other than Complainants) shall be styled "Petitioners". (10-18-84)

04. Complainant. Persons who complain to the Board of any act or of any person shall be styled "Complainants". In any proceeding which the Board brings on its own motion, it shall be styled "Complainant". (10-18-84)

05. Respondent. Persons against whom any complaint is filed or investigation initiated shall be styled "Respondents". (10-18-84)

06. Intervenor. Persons permitted to intervene, as provided in these rules, shall be styled "Intervenors". (10-18-84)

07. Protestant. Persons opposing applications or petitions shall be styled "Protestants". (10-18-84)

08. Staff. The Board'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 Board will represent the staff. (10-18-84)

103. (RESERVED).

104. 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 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 Presiding Officer, may otherwise participate in the conduct of the proceedings. (10-18-84)

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, if such has been requested, 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. (10-18-84)

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. (10-18-84)

04. Former Employees. No former employee of the Board or member of the Attorney General's staff may at any time after severing his employment with the Board or the Attorney General, appear, except with the written permission of the Board, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the Board. (10-18-84)

05. Expert Witnesses. No former employee of the Board shall at any time after severing his employment with the Board appear, except with the written permission of the Board, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation or preparation as a representative of the Board. (10-18-84)

06. Practice By Attorneys And Appearance. Practice and Appearance before the Board 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. No change of counsel or representation will be effective until notification of such change is received by the Presiding Officer. (10-18-84)

105. (RESERVED).

106. 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 Presiding Officer granting leave to intervene before being allowed to participate; provided, that the granting of leave to intervene or otherwise appear by the Presiding Officer in any matter or proceeding, shall not be construed to be a finding or determination by the Board that such party will or may be a party aggrieved by any ruling, order or decision of the Board, for purposes of court review or appeal. (10-18-84)

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 the Petitioner will be affected by such proceeding, outlining the matters and things relied upon by such Petitioner as a basis for his 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 Petitioner will present if such petition is granted. (10-18-84)

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. (10-18-84)

107. (RESERVED).

108. PLEADINGS.

01. Pleadings Enumerated. Pleadings before the Board shall be typed after those provided in the Idaho Rules of Civil Procedure. (10-18-84)

02. Verification. All pleadings, except those made by the Board, shall be verified. (10-18-84)

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 in paper approximately eight and one half by thirteen (8-1/2 x 13) inches in size, shall state the name and address of each party thereof, shall clearly identify the proceeding, 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. (10-18-84)

04. Defective Pleadings-Dissmissal. Upon the filing of any pleading, it will be inspected by the Presiding Officer, on his own initiative, or on the motion of any party, may strike or dismiss such document or require its amendment. Any party filing a pleading will be notified in writing of the Board's decision to strike, dismiss or amend the pleading. (10-18-84)

05. Amendments To Pleadings. A pleading may be amended only by leave of the Presiding Officer. (10-18-84)

06. Applications. All pleadings requesting a right or authority from the Board 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 that particular provision of law requiring or providing the same. The application shall be signed by the Applicant or his attorney, if any. (10-18-84)

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". (10-18-84)

08. Petitions For Rehearing. Petitions for rehearing shall set forth specifically the ground or grounds upon which Petitioner considers the order, decision, rule, direction, or regulation to be unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence such Petitioner will offer if rehearing is granted. Such petitions shall be filed with the Presiding Officer within the time limit prescribed in Subsection 202.01. (10-18-84)

09. Answers. Whenever a complaint is filed with the Board, setting forth a violation or omission by any party subject to Board 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 Board in connection therewith may file an answer thereto. Answers shall be filed with the Presiding Officer within the time limit prescribed in Subsection 110.05. Answers shall be so drawn as to advise the Presiding Officer 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, he 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 Presiding Officer from setting up any affirmative defense in the proceeding, and the Presiding Officer 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 002.15. (10-18-84)

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 his written protest with the Presiding Officer and, in the discretion of the Presiding 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 Presiding Officer may, whether or not a protest contains such request, set the matter in question for formal hearing. In such case, the Presiding Officer shall serve a copy of the protest upon the applicant or petitioners, or other party, at the time of giving notice of hearing. (10-18-84)

11. Motions. Motions shall be filed with the Board within the time limit prescribed in Subsection 110.06. Motions may be submitted for the Board's decision on either written or oral argument as determined by the Presiding Officer, and the filing of affidavits in support or contravention thereof may be permitted. Motions filed by different parties but involving the same point of law may be set for hearing at the same time. The practice respecting motions and forms thereof shall conform insofar as practicable with the practice in the District Courts of the State of Idaho. (10-18-84)

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 or things done or omitted to be done by such persons. Facts constituting such acts or omission, together with citations, statutes or rules of the Board 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 his attorney, if any, must appear upon the complaint. Two (2) or more grounds of complaint, concerning the same subject matter may be included in one complaint, but should be stated and numbered separately. Two (2) or more Complainants may join in one (1) complaint if their respective causes of action are against the same person and deal with substantially the same violation of the law, rule, regulation or order of the Board. (10-18-84)

13. Hearings On Complaints. Formal complaints will be set for hearing at the earliest convenience of the Presiding Officer, unless notice of satisfaction of the complaint, by answer or otherwise, is received by the Board. (10-18-84)

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 therefore may be filed, and will be handled in the same manner as other applications or petitions. (10-18-84)

109. (RESERVED).

110. FILING AND SERVICE.

01. Filing Of Pleadings. An original and five (5) legible copies of all pleadings shall be filed with the Board. The Presiding Officer may direct that a copy of all applications, petitions, complaints and other papers designated by the Presiding Officer be served by the party filing same on any person whom the Presiding Officer determines may be affected by the proceeding. Special requirements for preceding pursuant to Sections 67-5206 and 67-5208, Idaho Code are contained in Rule 220. (10-18-84)

02. Service By Parties. In the case of a formal complaint, the party against whom the complaint is directed shall be served by the Complainant. After any preceding has been instituted, all answers, motions and subsequent papers filed by any party must be served on all parties of record concurrently with the filing thereof. (10-18-84)

03. Service By Agency. All notices, findings of fact, opinions and orders required to be served by the Board may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail. (10-18-84)

04. Proof Of Service. There shall appear on the original of every pleading filed with the Board proof of service thereof by an acknowledgment of service of 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 _____

(10-18-84)

05. Time For Filing Answers. Answers to complaints or petitions shall be filed with the Board and service thereof made to parties of record within ten (10) days after service of said complaint or petition, unless for good cause, the Presiding Officer extends the time within which answer may be made. (10-18-84)

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 on the answer. If a motion is directed toward an answer, it must be filed within five (5) days of the service of the answer. Other motions must be timely filed. (10-18-84)

111. -- 112. (RESERVED).

113. PREHEARING CONFERENCES.

01. General. A Presiding Officer may, upon written notice to all interested parties, hold a prehearing conference for the purposes of formulation 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 orderly conduct and disposition of the proceedings or settlements thereof. (10-18-84)

02. Action Taken. The action taken at such conference and the agreements made there at by the parties concerned shall be recorded and shall be approved by such parties. When so approved such action will control the course of subsequent proceedings unless modified at the hearing to prevent manifest injustice. (10-18-84)

03. Recessing Hearing For Conference. In any proceeding the Presiding Officer may, in his 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. (10-18-84)

114. (RESERVED).

115. HEARINGS.

01. Place And Time. Hearings will be held before the Board which is to render the decision thereon or a Presiding Officer appointed by the Board. Notice of the place, date and hour of the hearing will be served at least twenty (20) days before the time set therefore, unless the Board shall find that public necessity requires the hearing to be held at an earlier date. Hearings will be held at such places in the state as may be designated in the Notice of Hearings. (10-18-84)

02. Failure To Appear. At the time and place set for hearing, if an Applicant, Petitioner, or Complainant fails to appear, the Presiding Officer may, with or without prejudice, dismiss the Petition, Application or Complaint or may, upon good cause shown, recess said hearing for a further period to be set by the Presiding Officer to enable said Applicant, Petitioner, or Complainant to attend. And, any and all costs incurred by reason of a party's non-appearance shall be assessed against such non-appearing party and no proceeding or action instigated by such non-appearing party shall be entertained by the Board until such assessed costs are paid. (10-18-84)

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. (10-18-84)

04. Conduct at Hearings. All parties to hearings, their counsel and spectators, will conduct themselves in a respectful manner. Smoking shall not be permitted at formal hearings of the Board while in session unless permitted by the Presiding Officer. (10-18-84)

05. Testimony Under Oath. All testimony to be considered by the Presiding Officer in formal hearings, except matters noticed officially or entered by stipulation or hearings held pursuant to Section 222, shall be sworn testimony. Before taking the witness stand, each person shall swear (or affirm) that the testimony he is about to give in hearing before the Presiding Officer shall be the truth, the whole truth, and nothing but the truth. The Presiding Officer shall require that factual assertions contained in the petition under Section 220 be in affidavit form as provided in that rule. (10-18-84)

06. Order Of Procedure. Subject to the special procedure required by Sections 220 and 222, Applicants, Petitioners, or Complainants shall present their evidence, and then such parties as may be opposing the applications, 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 state such intervention shall be heard. Evidence will ordinarily be received in the following order: (10-18-84)

- a. Upon Applications and Petitions: (10-18-84)
 - i. Applicant or Petitioner. (10-18-84)
 - ii. Board staff. (10-18-84)
 - iii. Intervenors or Protestants. (10-18-84)
 - iv. Rebuttal by Applicant or Petitioner. (10-18-84)
- b. Upon formal complaints: (10-18-84)

- i. Complainant. (10-18-84)
- ii. Respondent. (10-18-84)
- iii. Board staff. (10-18-84)
- iv. Rebuttal by Complainant. (10-18-84)
- c. Upon complaints by Agency and orders to show cause: (10-18-84)
 - i. Board staff. (10-18-84)
 - ii. Respondent. (10-18-84)
 - iii. Rebuttal by Board staff. (10-18-84)
 - iv. The aforementioned procedure may be modified at the discretion of the Presiding Officer. When two or more causes are set for hearing at the same time and place, the cause having the lowest docket number shall first be heard, if all parties thereto are ready, unless the Presiding Officer directs a different order to suit the convenience of the parties. (10-18-84)

07. Consolidation. The Board may consolidate two 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. (10-18-84)

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 he 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. (10-18-84)

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 Presiding Officer as evidence at the hearing. The Presiding Officer, however, may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties. (10-18-84)

10. Rules Of Evidence. The admission of evidence before the Board shall be governed by Section 67-5210, Idaho Code. (10-18-84)

11. 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 saving 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 Board ten (10) days before the hearing or such prior service is waived in writing. (10-18-84)

12. 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 Board or Presiding Officer or one or more Board members, may be issued by the Presiding Officer under the official seal of the Board, 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, papers, accounts or other documents, unless directed to issue by the Presiding Officer on his own motion, will be issued only upon application in writing, which application must specify, as clearly as may be, the books, papers, accounts or other documents desired. The Presiding Officer, upon motion made promptly and, in any event, at/or before the time specified in the

subpoena for compliance therewith, may: (10-18-84)

a. Quash the subpoena if it is unreasonable or oppressive; or (10-18-84)

b. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, accounts or other documents desired. (10-18-84)

13. Depositions. The Board or Presiding Officer or any party may in any investigation or hearing before the Board, cause the deposition of witnesses residing within or without 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 books, documents, papers and accounts. (10-18-84)

14. Continuances. A Presiding Officer may, in his discretion, 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. (10-18-84)

15. Briefs. In any hearing, a Presiding Officer may order briefs to be filed within such time as may be allowed by the Presiding Officer. Five (5) copies of briefs shall be filed with the Presiding Officer and shall be accompanied by any acknowledgment of/or an affidavit showing service on other parties of record. (10-18-84)

16. Official Notice. The Board may take official notice subject to the provisions of Section 67-5210(4), Idaho Code of the following matters: (10-18-84)

a. Rules, regulations, official reports, decisions and orders of any regulatory agency, state or federal. (10-18-84)

b. Contents of decisions, orders, certificates and permits issued by the Board. (10-18-84)

c. Matters of common knowledge and technical or scientific facts of established character. (10-18-84)

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. (10-18-84)

e. Opportunity to contest matters noticed shall be afforded all parties. (10-18-84)

17. Open Hearings. All hearings shall in the discretion of the Presiding Officer be open to the public. (10-18-84)

18. Rulings. The Presiding Officer shall rule on the admissibility of all evidence, subject to the requirements of Subsection 115.10. Such rulings may be reviewed by the Board in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Board is necessary to promote substantial justice, the Presiding Officer may refer the matter to the Board for determination. Any ruling may be deferred to the entire Board by the Presiding Officer or be taken under advisement by the Presiding Officer. (10-18-84)

19. Objections And Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken. (10-18-84)

20. 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. (10-18-84)

21. Official Record. An official record of all proceedings before the Board shall be kept. (10-18-84)

116. -- 199. (RESERVED).

200. DECISIONS AND ORDERS.

01. Submission Of Decisions. A proceeding shall stand submitted for decision by the Board after the taking of evidence or the filing of briefs or the presentation of oral argument as may have been prescribed by the Board or the Presiding Officer, unless otherwise specifically provided. (10-18-84)

02. Proposed Orders. When a case stands submitted for final decision on the merits, the Board shall decide the issue presented thereby and issue a final decision including findings of fact and conclusion of law. The Board may, in its discretion, request proposed findings of fact from each party. If such is done, the Board shall make a ruling on each proposed finding. (10-18-84)

03. Service Of Orders. Parties shall be notified either personally or by mail of any decision or order. Copies of the decision or order shall be served on all parties. (10-18-84)

04. Public Inspection. Decisions and orders in the discretion of the Board shall be open to public inspection. (10-18-84)

201. (RESERVED).

202. REHEARINGS.

01. Time For Filing. Any party to a proceeding and affected by the order of the Board may apply for a rehearing within twenty (20) days after service of the order. Petitions for rehearing shall, as to form and content, conform to the requirements of Subsection 108.08, and filing and service thereof shall conform to the requirements set forth in Subsection 110.01. (10-18-84)

02. Procedure At Rehearings. Rehearings will be conducted in accordance with the procedure at regular hearings, subject to the discretion of the Board or Presiding Officer. (10-18-84)

03. Effect Of Filing. The filing of a petition for rehearing shall not excuse compliance with the order nor suspend the effectiveness of such order unless otherwise (10-18-84)

04. Answer To Petition. Within ten (10) days after a petition for rehearing is filed, any party to the proceeding may file an answer in support of or in opposition to the petition. (10-18-84)

203. -- 217. (RESERVED).

218. 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. (10-18-84)

02. Additional Information. Additional information with reference to proceedings before the Board or the status of any matter may be secured by applying to the Board. (10-18-84)

219. (RESERVED).

220. PROCEDURE UNDER SECTIONS 67-5206 AND 67-5208, IDAHO CODE.

01. Petitioner. An interested person or persons filing a petition under Sections 67-5206 or 67-5208, Idaho Code will be denominated the Petitioner. (10-18-84)

02. Form. The Petition will be substantially as follows: (10-18-84)

BEFORE THE STATE BOARD OF SCALING PRACTICES

STATE OF IDAHO

Petition of
(Name of Petitioner) (Promulgation, Amendment or Repeal or Declaratory Ruling, whichever is appropriate) (7-1-93)

- 03. Numbered Paragraphs.** All paragraphs of the petition will be numbered and centered on the page. (10-18-84)
- 04. First Paragraph.** The first paragraph will outline the interest of the Petitioner in the matter. (10-18-84)
- 05. Second Paragraph.** The second paragraph shall: (10-18-84)
 - 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 Petitioner's suggested amendment; or in the case of repeal the citation of the rule; or, (10-18-84)
 - b. In proceedings under Section 67-5208, Idaho Code indicate the rule, statute or order which Petitioner feels is applicable to his situation. (10-18-84)
- 06. Third Paragraph.** The third paragraph will commence the factual allegations asserted by Petitioner in support of his position to promulgate, amend or repeal of his claim for declaratory ruling. (10-18-84)
- 07. Legal Assertion.** Immediately following the factual allegations will be Petitioner's legal assertion in respect to his position for promulgation, amendment or repeal or his claim for declaratory ruling. (10-18-84)
- 08. Authority.** All legal assertions must be accompanied by citations of cases and/or statutory provision supporting Petitioner's legal contentions. (10-18-84)
- 09. Briefs.** Briefs may be submitted in support of any contentions made by the Petitioner and, in any circumstance, documents, data and exhibits 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 one (1). (10-18-84)
- 10. Date And Signature.** The Petition will be dated and signed by the Petitioner and his signature will be acknowledged. (10-18-84)
- 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 his position or title, will be delivered to the Petitioner. The original will be kept with the Board and a copy, certified as provided in this rule, delivered to the Petitioner. (10-18-84)
- 12. Copies.** There shall be filed with the Board the original and five (5) copies of the petition and related documents, one (1) of which copies will be certified and returned to the Petitioner. (10-18-84)
- 13. Affidavits.** All factual matters set out in the petition should be detailed with affidavits and accompany the petition. (10-18-84)
- 14. Board Discretion.** In the discretion of the Board Section 67-5208, Idaho Code matters may be set for rule making or proceedings under Section 67-5206, Idaho Code. (10-18-84)

221. (RESERVED).

222. HEARING PROCEDURE FOR ADOPTION OF RULES.

- 01. Sign-In Roster.** At all hearings a sign-in roster will be kept at the entrance and all persons

attending such hearing will sign the roster and such names will be included in the official record. (10-18-84)

02. Procedure. If the hearing is held for the adoption, amendment or repeal of procedural rules: (10-18-84)

a. The manner in which testimony and evidence may be presented, either orally or in writing, will be determined by the Presiding Officer and such determination will be set out in the notice of hearing. (10-18-84)

b. If only written testimony is deemed acceptable by the Presiding Officer, then such testimony and exhibits, documents and data must be submitted to the Presiding Officer at least three (3) days prior to the date set for the hearing. (10-18-84)

c. If oral testimony is permitted, the manner of testifying and time allowable for oral presentation will lie in the discretion of the Presiding Officer and any exhibits, documents and data may be introduced during oral presentation. (10-18-84)

d. If both oral and written testimony are permitted by the Presiding Officer: (10-18-84)

i. 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. (10-18-84)

ii. Any exhibits may, and statements and exhibits of persons unable to attend the hearing must, be sent to the Board 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 toto or summarize them for the transcript. In any event, they will become, in toto, part of the record. (10-18-84)

03. Discussions. 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. (10-18-84)

04. Relevancy. 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. (10-18-84)

05. 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 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 67-5203(a)(1), Idaho Code, and any other matters directed to be included by these rules. (10-18-84)

06. Presiding Officer. 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 stamped by the Presiding Officer and will indicate the date and name of the hearing, who the exhibit was introduced by, and bear the initials of the Presiding Officer. (10-18-84)

07. Order Of Presentation. In all hearings other than those conducted pursuant to 67-5206, the Board, when proposing adoption, amendment or repeal of rules and regulations will present their position first and include a citation of authority for the adoption, amendment or repeal of rules and regulations. In those hearings conducted under 67-5206, the Petitioner will have the burden of first presenting his position. After the first presentation, the order of presentation for the remainder of the hearing will be in the discretion of the Presiding Officer. (10-18-84)

08. Questioning. The 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. (10-18-84)

09. Supplemental Statements. The Presiding Officer, upon his own motion or upon motion made by

the Board or its staff, if granted, may request supplemental statements from persons presenting oral and/or written testimony and statements to be submitted to him and to be included as part of the record. Such supplemental statements 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 day period the Presiding Officer will prepare an affidavit indicating the acceptance or rejection of such supplemental statements or non-compliance with his request for supplemental statements. The statements so accepted and the affidavit will become a part of the record of the hearing. (10-18-84)

10. Written Statements. All written testimony and statements submitted under this rule must be typewritten or process printed and shall be signed by the person making the same and include thereon his or her mailing address. (10-18-84)

223. -- 299. (RESERVED).

300. INFORMAL HEARINGS--SCOPE AND AUTHORITY.

These rules shall apply to all informal hearings before the board of scaling practices. These rules are adopted pursuant to Sections 38-1208 and 67-5201, Idaho Code et sequitur, and are intended to facilitate the Board in executing its duties and responsibilities under Title 38, Chapter 12, Idaho Code. These rules shall be construed to effectuate the intent of the legislature in adopting the Idaho Scaling Law in a reasonable, fair and expeditious manner. (10-18-84)

301. -- 350. (RESERVED).

351. DEFINITIONS.

01. Informal Hearing. Any hearing directly before the board of scaling practices as opposed to a formal hearing before a hearing officer designated by the Board. (10-18-84)

02. Board. The duly authorized and appointed members of the board of scaling practices. (10-18-84)

03. Complaint. A statement alleging a violation of the Idaho Scaling Law, Title 38, Chapter 12, Idaho Code. (10-18-84)

04. Complainant. A person or entity who submits a complaint to the Board. (10-18-84)

05. Respondent. The person or entity (10-18-84)

352. (RESERVED).

353. COMPLAINTS.

01. Submittal. The complaint shall be submitted in writing in the name of the primary complainant. (10-18-84)

02. Contents. The complaint shall state: (10-18-84)

a. The name and address of the person or entity actually aggrieved. (10-18-84)

b. A short and plain statement of the nature of the complaint including the location and date of the alleged violation. (10-18-84)

c. The complainant's notarized signature. (10-18-84)

d. The complainant shall submit with the complaint written or documentary evidence in support of the alleged violation. (10-18-84)

03. Gross Scale. Complaints which allege violations of Section 38-1202(c), Idaho Code requiring payment by gross scale shall include the following: (10-18-84)

- a. A notarized complaint or statement in accord with Subsection 353.02.d. (10-18-84)
- b. A readable copy of the contract, payment slips, and scale tickets for each transaction involved in the alleged complaint. (10-18-84)

354. -- 399. (RESERVED).

400. RESPONSE TO COMPLAINT.

01. Response. The respondent shall submit to the Board a written response to the allegations of the complaint with supporting evidence within thirty (30) days after receiving a copy of the same from the Board. The Board shall presume that the respondent received such complaint and evidence within three (3) days after mailing by the Board, unless the respondent submits evidence to the contrary to the Board. (10-18-84)

02. Consideration. The Board shall consider a complaint in its next meeting following the timely response of the respondent or the respondent's failure to respond within the time limit of Subsection 400.01. (10-18-84)

401. -- 499. (RESERVED).

500. CONDUCT OF INFORMAL HEARINGS.

01. Procedure. The chairman of the Board shall minimize, where possible, the use or application of formal court rules of procedure and evidence in the spirit of an informal hearing consistent with the intent of these rules, fairness to the parties and the interests of justice. The chairman shall conduct the informal hearing in an expeditious manner and shall control testimony and questioning to avoid unnecessary debate between the complainant and the respondent, including without limitation, such as may result from cross examination. (10-18-84)

02. Statements. The complainant and the respondent may make a brief statement concerning the allegation(s) and may introduce new evidence in support of or in opposition to the allegation(s). Statements shall be concise, specific, relevant to the allegation(s) and limited to ten (10) minutes per party, unless the specific allegation(s) as determined by the chairman clearly requires greater time to address the same. (10-18-84)

03. Questions. All questions at the hearing shall be directed to the Board. The Board shall consider written or oral questions from the complainant or respondent at the hearing or take such questions under advisement. (10-18-84)

04. Questioners. Only the Board may ask questions of the complainant or respondent, and may call witnesses. (10-18-84)

05. Representation. The complainant and the respondent may be represented by counsel. (10-18-84)

501. -- 599. (RESERVED).

600. TIME FOR BOARD DETERMINATION.

After submission of the complaint and supporting documentation for evidence in accord with Section 400 and after an informal hearing on a complaint wherein the parties have had opportunity to respond to these allegations and to present testimony, documentation, or other evidence thereon in accord with Section 500 the Board may thereafter make its determination or take the matter under advisement and reach its determination within thirty (30) days. (10-18-84)

601. -- 699. (RESERVED).

700. FINAL DETERMINATION.

01. Board Decision Final. The Board's determination shall be final, subject to appeal pursuant to Sections 67-5215 and 67-5216, Idaho Code and may include the following: (10-18-84)

- a. That the complaint failed to state a violation of the scaling law. (10-18-84)
- b. That the complaint and supporting evidence failed to adequately show a probable violation of the scaling law. (10-18-84)
- c. That the complaint and supporting documentation indicate a probable violation of the Idaho Scaling Law. (10-18-84)

701. -- 799. (RESERVED).

800. BOARD ACTION UPON DETERMINATION OF PROBABLE VIOLATION.

In the event that the Board determines that the complaint and supporting evidence indicate a probable violation of the Idaho Scaling Law, the Board shall within thirty (30) days transmit the complaint and supporting documentation to the prosecutor of the county where the violation occurred. (10-18-84)

801. -- 899. (RESERVED).

900. ACCESS TO RECORDS.

The Board shall provide to the respondent or his counsel a copy of the complaint and any supporting evidence to which the respondent does not have access at the earliest date after the Board has received the same. The Board shall provide the complainant or his counsel a copy of any answer or response and supporting evidence thereof to which the complainant does not have access at the earliest date after the Board has received the same. (10-18-84)

901. -- 999. (RESERVED).

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