

02. Oral Argument -- Time for Filing. If the moving party desires oral argument or hearing on the motion it must state so in the motion. Any motion to dismiss, strike or limit an appeal must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within ten (10) days after filing of the answer. Other motions may be filed at any time upon compliance with Subsection 72.03. (2-18-05)

03. Prehearing Motions. All prehearing motions must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. (2-18-05)

073. ANSWERS (RULE 73).

01. Answers to Pleadings Other Than Motions. Answers to pleadings, or appeals must be filed and served on all parties of record within ten (10) days after filing of the pleading being answered, unless order or notice modifies the time within which answer may be made. When an answer is not timely filed under this rule the presiding officer may issue a notice of default. Answers to appeals must admit or deny each material allegation of the appeal. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (2-18-05)

02. Answers to Motions. Answers to motions may be filed by persons or parties involved in the appeal. In no event is any party entitled to more than fourteen (14) days to respond to a motion or move for additional time to respond to a motion. (2-18-05)

074. BRIEFS (RULE 74).

The Board or presiding officer may request briefs from the parties either prior to the hearing of the evidence or after said hearing. (2-18-05)

075. DISCOVERY (RULE 75).

01. Discovery -- Written Permission. Parties to a pending appeal may engage in discovery if they obtain prior written permission from the presiding officer. The following procedures shall govern discovery: (2-18-05)

a. The motion for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. Only one (1) discovery motion may be filed by a party. (2-18-05)

b. The motion shall contain a short plain statement of the reason the discovery is useful to the preparation of the appeal. (2-18-05)

c. The motion shall be accompanied by the complete discovery request. The presiding officer shall deny discovery motions which do not include the complete discovery request. (2-18-05)

d. Discovery shall be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the presiding officer. (2-18-05)

e. Service upon other parties is required at the same time as filing with the Board in accordance with the requirements of this chapter. (2-18-05)

f. Discovery responses shall be served simultaneously to all other parties and the Board. Supplementation of responses shall be in accordance with the Idaho Rules of Civil Procedure. (2-18-05)

g. The order compelling discovery may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. (2-18-05)

h. The motion shall be signed by an authorized representative or a party to the appeal. (2-18-05)

02. Scope of Discovery: BOE Appeals. Production requests and written interrogatories may be

submitted in accordance with the rule or order of the Board. Only the following may be subject to discovery unless otherwise ordered by the presiding officer: (2-18-05)

a. Information or records concerning appraisal and assessment of the subject property and comparable properties, financial statements and related schedules with respect to the subject property and comparable properties, sale agreements or contracts with respect to the subject property, comparable sales documents and lease agreements with respect to the subject property, completed studies or reports with respect to the subject property and comparable properties. For an exemption appeal, information or documents relating to the exemption. (2-18-05)

b. The request for production of documents or written interrogatories concerning the matters set forth above are limited to the last three (3) years proceeding the assessment. (2-18-05)

c. The request for production of documents shall specifically identify each document requested. The request for inspection of land or other property shall be in accordance with the Idaho Rules of Civil Procedure. (2-18-05)

03. Scope of Discovery: STC Appeals. (2-18-05)

a. Production requests, requests for admissions and written interrogatories may be submitted in accordance with the rule or order of the Board. (2-18-05)

b. Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the Board. (2-18-05)

04. Sanctions. Failure to substantially comply with Board ordered discovery, in a good faith attempt at full compliance, may result in one or more sanctions up to and including a dismissal or default judgment of the appeal(s.) (2-18-05)

076. -- 079. (RESERVED)

080. DISCOVERY WITHOUT BOARD AUTHORIZATION (RULE 80).

Parties may agree among themselves to provide for discovery without reference to the Board's statutes, rules of procedure, or orders. (2-18-05)

081. -- 084. (RESERVED)

085. INTERVENTION (RULE 85).

01. Intervention of Right. Upon timely application made in writing no later than fifteen (15) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal: (2-18-05)

a. When a statute confers an unconditional right to intervene; (7-1-93)

b. When the applicant claims in writing an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. (4-5-00)

c. In any appeal in which it is not a party the Idaho State Tax Commission may intervene as a matter of right. (7-1-93)

02. Permissive Intervention. Upon timely application made in writing no later than fifteen (15) days prior to the date set for hearing of an appeal anyone may be permitted to intervene in an action: (2-18-05)

a. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (2-18-05)

- b. When a statute confers a conditional right to intervene; or (7-1-93)
- c. In appeals brought under Section 63-511, Idaho Code, when an applicant can show in writing that he is a person aggrieved by the decision or that he is a taxpayer of the county in which said appeal was brought; or (4-5-00)
- d. When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or a state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency, upon timely application in writing, may be permitted to intervene in the action. In exercising this discretion the Board shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. (4-5-00)

086. PUBLIC WITNESSES (RULE 86).

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 106 and 107, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits. (2-18-05)

087. -- 089. (RESERVED)

090. CONSENT AGREEMENT -- DEFINED -- FORM AND CONTENTS (RULE 90).

01. Consent Agreement Defined. Agreements between the taxing authority and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called "consent agreements." Consent agreements are intended to require compliance with existing law. (2-18-05)

02. Requirements. A consent agreement must: (2-18-05)

- a. Recite the parties to the agreement; (2-18-05)
- b. Fully state the conduct proscribed or prescribed by the consent agreement. (2-18-05)

03. Additional. In addition, a consent agreement may: (2-18-05)

- a. Recite the consequences of failure to abide by the agreement; (2-18-05)
- b. Provide for payment of civil or administrative penalties authorized by law; (2-18-05)
- c. Provide for loss of rights, licenses, awards or authority; (2-18-05)
- d. Provide for other consequences as agreed to by the parties; and (2-18-05)
- e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (2-18-05)

091. -- 099. (RESERVED)

100. FAIR HEARING (RULE 100).

01. Hearing Opportunity. In any case appealed to the Board, all parties shall be afforded an opportunity for a fair hearing after notice of hearing is provided. Opportunity shall be afforded all parties to present evidence and argument. (4-5-00)

02. Purpose of Hearing. The Board's goal in conducting hearings shall be the acquisition of sufficient, accurate evidence to support a fair and just determination of the issues involved in the appeal. (2-18-05)

03. Notice of Hearing -- Mailing. Notice of place, date, and hour of all hearings shall be mailed at least twenty (20) days before the date set for hearing. (4-5-00)

04. Setting of Hearing Date. In all instances where a hearing is deemed necessary by the Board, the Board will schedule a time and place each party may appear and offer evidence and arguments in support of his position. (4-5-00)

05. Telephonic Hearing. The Board may conduct telephonic hearings where each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (4-5-00)

06. Notice of Hearing -- Contents. The notice of hearing shall include: (2-18-05)

a. A statement of the time, place and nature of the hearing; (7-1-93)

b. A statement of the legal authority and jurisdiction under which the hearing is to be held; (7-1-93)

c. A reference to the particular sections of the statutes and rules involved concerning the Board's legal authority to conduct the hearing; (4-5-00)

d. The name of the hearing officer who will conduct the hearing; (4-5-00)

e. A short and simple statement of the matters asserted or the issues involved. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. (4-5-00)

07. Conference at Hearing. The presiding officer may convene the parties before hearing or recess the hearing to discuss formulation of simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. (2-18-05)

101. FAILURE TO APPEAR -- DEFAULT OR DISMISSAL -- SETTING ASIDE -- APPEARANCES (RULE 101).

01. Default or Dismissal. Failure of either party to appear at the time and place appointed by the Board may result in a dismissal of that appeal or of the granting of the appeal. (4-5-00)

02. Setting Aside. Within ten (10) days after service of a default or dismissal order, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The objection must be served on all other parties to the appeal and their representatives in accordance with the requirements of this chapter. The Board may, for good cause, set aside an entry of dismissal, default, or final order. (2-18-05)

03. Waiver of Parties' Appearance. Upon written stipulation of both parties that no facts are at issue, an appeal may be submitted to the Board with or without oral argument. However, the Board in its discretion may require appearance for argument or presentation of evidence. (2-18-05)

102. WITHDRAWAL OF PARTIES (RULE 102).
Any party may withdraw from the appeal in writing or on the record at hearing. (2-18-05)

103. (RESERVED)

104. ALTERNATIVE DISPUTE RESOLUTION (RULE 104).

01. Alternative Resolution of Contested Cases. The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact-finding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. The Board may use ADR for the resolution of issues in controversy in a contested case if the Board finds that such a proceeding is appropriate. The Board may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (2-18-05)

02. Neutrals. When ADR is used for all or a portion of a contested case, the Board may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the Board or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (2-18-05)

03. Confidentiality. Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or rule to be made public. (2-18-05)

105. INFORMAL DISPOSITION -- SETTLEMENT (RULE 105).

Any action may be dismissed by the Board by stipulation, agreed written settlement, consent order, or default. For good cause shown and upon written motion made within ten (10) days of entry of a Board order, the Board may set aside such entry, judgment, or order. (2-18-05)

01. Formalizing Agreements. Agreements by the parties may be put on the record or may be reduced to writing and filed with the Board. (2-18-05)

02. Confidentiality. Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. (2-18-05)

03. Settlement Inquiry. Through notice or order on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (2-18-05)

04. Consideration of Settlements. Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. (2-18-05)

05. Burden of Proof. Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (2-18-05)

06. Settlement Not Binding. The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. (2-18-05)

106. PRESIDING OFFICER (RULE 106).

Any member(s) of the Board or assigned hearing officer(s) may preside at the hearing and shall have power to:

- (2-18-05)
- 01. Oath or Affirmation.** Administer oaths or affirmations, call a party or other person present at hearing as a witness, examine witnesses and receive evidence. (4-5-00)
- 02. Depositions.** Take or cause depositions to be taken. (7-1-93)
- 03. Hearing.** Regulate the course of the hearing and maintain an orderly proceeding. (4-5-00)
- 04. Motions.** Dispose of the procedural requests, motions or similar matters. (7-1-93)
- 05. Certification by Board.** Make decisions or proposals for decisions (subject to certification by the entire Board or a majority of the Board). (4-5-00)
- 06. Official Record.** Develop a full and accurate record and certify the record of said appeal on behalf of the Board. (2-18-05)
- 07. Other Action.** Take any other appropriate action reasonable under the circumstances. (4-5-00)
- 107. PROCEDURE AND TESTIMONY.**
- 01. Preliminary Procedure.** The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion or motions. Parties may then make opening statements as they may desire. (7-1-93)
- 02. Testimony.** All testimony to be considered by the Board in formal hearings, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be taken only on oath or affirmation. (4-5-00)
- 03. Order of Procedure.** The appellant shall go forward to present his case first with the respondent and any intervenor then presenting such matters as he deems proper. Parties may then make closing statements as they may desire in the same order as the presentation of evidence. The presiding officer may require that the parties submit briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks shall be allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided. (2-18-05)
- 04. Presentation of Evidence.** Evidence may be presented in the following order: (4-5-00)
- a.** Evidence is presented by appellant. (4-5-00)
- b.** Evidence is presented by any intervening or opposing party. (4-5-00)
- c.** Rebuttal evidence is presented by appellant. (4-5-00)
- d.** Surrebuttal evidence is presented by any intervening or opposing party. (4-5-00)
- 05. Examination of Witnesses.** With regard to any witness who testifies, the following examination may be conducted: (4-5-00)
- a.** Direct examination conducted by the party who called the witness. (4-5-00)
- b.** Cross-examination by any intervening or opposing party. (4-5-00)
- c.** Redirect examination by the party who called the witness. (4-5-00)
- d.** Recross-examination by any intervening or opposing party. (4-5-00)
- e.** Examination by the hearing officer. (4-5-00)

108. -- 109. (RESERVED)

110. STIPULATIONS (RULE 110).

With the approval of the presiding officer the parties may stipulate as to any fact at issue, either by written stipulation or introduced in evidence as an exhibit or by oral statement shown upon the hearing record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation of the parties. (2-18-05)

111. CONTINUANCE -- EXTENSIONS OF TIME (RULE 111).

01. Continuances. A continuance may be ordered by the Board upon filing of a timely and written motion containing the stipulated agreement and signature of all parties to the appeal. For a scheduled hearing, timely shall mean at least fifteen (15) days prior to hearing. The request/motion shall clearly and convincingly show good cause and contain the specific time extension requested. (2-18-05)

02. Consideration. Continuances shall be generally disfavored by the Board. The Board shall grant, or require on its own initiative, a continuance only when unusual and highly pressing circumstances are present. In no instance shall an extension cause a delay in proceedings for more than three (3) months. In no instance shall a second continuance be granted. (4-5-00)

112. -- 114. (RESERVED)

115. OFFICIAL NOTICE (RULE 115).

The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of general, technical, financial, or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the information sought to be noticed. (2-18-05)

116. OPEN HEARINGS AND CLOSED DELIBERATIONS (RULE 116).

01. Public Hearings. All hearings conducted by the Board shall be open to the public except where confidential evidence is being taken under a protective order. (4-5-00)

02. Closed Deliberations. After hearing and the close of the record, the Board may recess to closed deliberations for the limited purpose of deciding the matter before it. (4-5-00)

117. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 117).

01. Evidence, Admissibility and Evaluation. Evidence should be taken by the Board to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any evidence. The presiding officer, with or without objection, may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. The Board shall give effect to rules of privilege recognized by law. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of serious affairs. When proceedings will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form. The Board's experience, technical competence and specialized knowledge may be used in evaluation of the evidence. (2-18-05)

02. Documentary Evidence. Upon request, parties shall be given an opportunity to compare the copy with the whole of the original document. Filing of a document does not signify its receipt in evidence, and only those documents which have been received in evidence shall be considered as evidence in the official record of the case. (2-18-05)

03. Depositions. A deposition may be offered into evidence. (2-18-05)

04. Prepared Testimony. The presiding officer may order a witness's prepared testimony previously distributed to all parties be included in the record of hearing as if read. Admissibility of prepared testimony is subject to the standards expressed in this rule. (2-18-05)

05. Objections and Exceptions. Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time the evidence is offered. Formal exceptions to rulings are unnecessary and need not be taken. (4-5-00)

06. Evidentiary Rulings. The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of this rule in the interest of justice. Such rulings may be reviewed by the Board in determining the matter on its merits. Any evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. (2-18-05)

07. 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. In any event where the presiding officer rules evidence inadmissible, the party seeking to introduce such evidence must make an Offer of Proof regarding it in order to have such evidence considered by the Board. (4-5-00)

08. Failure to Produce Evidence -- Adverse Inference. The Board may draw an adverse inference when a party or witness fails to produce requested evidence which is reasonably in the party or witnesses's control. (2-18-05)

118. EXHIBITS (RULE 118).

01. Custody. The Board shall keep all original exhibits in its care and custody unless otherwise provided by law. (2-18-05)

02. Marking Exhibits. Exhibits will be marked by the presiding officer indicating the sponsoring and offering party. (2-18-05)

03. Form. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of medium customarily used for them. (2-18-05)

04. Copies. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. (2-18-05)

05. Objections. Exhibits identified at hearing are subject to appropriate and timely objection before the close of the hearing. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. (2-18-05)

119. -- 124. (RESERVED)

125. CONFIDENTIALITY -- PROTECTIVE ORDERS (RULE 125).

The decisions and record in appeals before the Board are public records unless otherwise provided by Title 9, Chapter 3, Idaho Code, or in the event a protective order, consistent with Title 9, Chapter 3, Idaho Code, is issued by the Board requiring that specified parts of the record be kept confidential. A party may file a motion for a protective order showing cause why specific information in the record, or likely to become part of the record through discovery or evidence obtained at hearing, should remain confidential. The motion under this rule must also contain a statement or sworn affidavit as to the truthfulness of the contents. The party requesting a protective order must serve a copy of the request on all other parties and the parties' representatives in accordance with the requirements of this chapter. If any other party opposes the request for a protective order, the party must file a written opposition within ten (10) days of the date of service of the request. The motion for protective order must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgement letter. (2-18-05)

126. -- 134. (RESERVED)

135. SCOPE OF APPEAL IN AD VALOREM APPEALS (RULE 135).

In all appeals brought under Section 63-511, Idaho Code, in which the appellant appeals only the value or exempt status established by the board of equalization upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value or exempt status when one (1) or the other is appealed. The Board shall have the power to increase or decrease the value of property in market value appeals regardless of which party appealed. If the Board finds that a property classification is in error, it shall determine the correct classification. (2-18-05)

136. -- 139. (RESERVED)

140. DECISIONS AND ORDERS (RULE 140).

01. Submission for a Decision. The proceeding shall stand submitted for decision by the Board after taking of evidence, the filing of briefs or the presentation of oral arguments as may have been prescribed by the Board or the presiding officer unless otherwise specifically provided. (4-5-00)

02. Post Hearing Evidence. Unless requested by the Board, no posthearing evidence will be accepted. (2-18-05)

03. Proposed Orders. Prior to a final decision on the merits the Board may, in its discretion, request proposed findings of fact and conclusions of law from each party. (2-18-05)

04. Decisions. Board decisions are binding pursuant to Section 63-3813, Idaho Code. A recommended decision or substantive order shall become final when signed by at least two (2) board members. Any member who dissents or concurs may state their reasons. (2-18-05)

05. Service of Orders. Parties shall be notified by mail of any decision or order. Copies of the decision or order shall be served on all parties and the parties' representatives of record. (4-5-00)

06. Public Inspection. Decisions and orders of the Board shall be open to public inspection. (7-1-93)

07. Decision of Board. A decision of the Board will be based on the official record for the case. When no dispute of fact exists, the decision will be based on conclusions of law made by the Board. The Board shall hear and determine appeals as de novo proceedings. Decisions shall contain separately stated findings of fact and conclusions of law upon which the Board's determination is based. (2-18-05)

141. -- 144. (RESERVED)

145. RECONSIDERATIONS -- REHEARINGS (RULE 145).

01. Time for Filing. A party adversely affected by a decision of the Board may move for reconsideration or rehearing within ten (10) days of the time the decision of the Board is mailed. The petitioner must file a supporting brief making a strong showing of good cause why reconsideration or a rehearing should be granted. In a motion for rehearing where the presentation of additional evidence is sought or anticipated, the motion shall include the reason why such evidence was not presented previously. Filing and service thereof shall conform to the requirements set forth in Rules 60 and 61. If the party requesting rehearing so requests, the matter may be determined by the entire Board. If a rehearing by the entire Board is requested and granted it will be conducted at a regular meeting in Boise or a meeting convened for that purpose at Boise or such other place as may be designated by the chairman of the Board. (2-18-05)

02. Consideration. Reconsideration or rehearing may be granted or ordered on the Board's own motion if, in reaching the decision, the Board has overlooked or misconceived some material fact or proposition of law; misconceived a material question in the case; applied law in the ruling that has subsequently changed; or a party is found to have been denied the opportunity for a fair hearing. (2-18-05)

03. Procedure for Reconsideration. Reconsideration is based on the record, unless the Board allows additional evidence and argument. (4-5-00)

04. Procedure at Rehearing. Rehearings will be conducted in accordance with the procedure at regular hearings, subject to the discretion of the Board or the presiding officer. (4-5-00)

05. Answer to Motion for Reconsideration or Rehearing. Within ten (10) days after a motion for reconsideration of rehearing is filed, any party to the proceeding may file an answer in support of or in opposition to said motion. A copy of the answer must be served on other parties and the representatives of record for such parties. (4-5-00)

06. Disposition. A petition for reconsideration or rehearing shall be deemed denied if, within twenty (20) days from the date the petition is received by the Board, no response is made by the Board. (4-5-00)

146. -- 150. (RESERVED)

151. OFFICIAL RECORD (RULE 151).

01. Content. The record for a contested case shall include: (2-18-05)

a. All notices of proceedings; (2-18-05)

b. All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (2-18-05)

c. All intermediate or interlocutory rulings; (2-18-05)

d. All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (2-18-05)

e. All offers of proof, however made; (2-18-05)

f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (2-18-05)

g. All evidentiary rulings on testimony, exhibits, or offers of proof; (2-18-05)

h. All taxing authority data submitted in connection with the consideration of the proceeding; (2-18-05)

i. A statement of matters officially noticed; (2-18-05)

j. All recommended orders, preliminary orders, final orders, and orders on reconsideration; (2-18-05)

k. Photocopies of all original documents may be substituted for the originals unless specifically objected to by a party to the proceedings; and (2-18-05)

l. The transcript defined in Subsection 151.02. (2-18-05)

02. Transcript. The official transcript of the hearing will be taken by means of electronic tape recorder. Any party desiring the taking of stenographic notes by a qualified court reporter must request at least fifteen (15) days before the date set for hearing and must submit to the Board or presiding officer the name of the qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's fees and if the reporter's transcript is deemed by the Board or presiding officer to be the official transcript of the shearing, the party requesting the reporter shall furnish the Board a transcript free of charge. (2-18-05)

03. Cost of Transcript. Uncertified copies of the transcript tape(s) will be provided at the cost of ten

dollars (\$10) per tape. (2-18-05)

152. -- 154. (RESERVED)

155. SUBPOENAS (RULE 155).

01. Form and Purpose. Every subpoena shall be prepared by the requesting party or at the Board's own motion and shall state the name of the Board and the title of the action, and shall command each person to whom it is directed to attend and give testimony and/or produce the books, papers, documents, or tangible things designated therein at the time and place therein specified. A subpoena may be used for the purpose of discovery or for the purpose of presenting evidence at a formal hearing. (4-5-00)

02. Issuance to Parties. Upon written application of parties, attorneys or other representative authorized to practice before the Board for any party in a proceeding, including a showing of relevance and the reasonable scope of the testimony or evidence sought, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The Board may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. (4-5-00)

03. Service. Service shall be the responsibility of the requesting party. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one (1) day's attendance and the mileage allowed by law to a witness in civil cases in the district court. (4-5-00)

04. Fees. Witnesses summoned pursuant to subpoena shall be paid by the party at whose instance they appear the same fees and mileage allowed by law to a witness in civil cases in the district court. (7-1-93)

05. Proof of Service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with the Board. (7-1-93)

06. Quashing. Upon motion made promptly, at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the Board may:

a. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or (7-1-93)

b. Condition denial of the motion upon just and reasonable conditions. (7-1-93)

07. Enforcement. If any witness shall fail to properly respond to a subpoena, the Board may petition the district court in and for the county in which the proceeding is pending setting forth the issuance of the subpoena, its proper service and the basis upon which the Board alleges that the witness failed to respond. (7-1-93)

08. Geographical Scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Idaho at any designated place of hearing. (7-1-93)

156. -- 164. (RESERVED)

165. REQUEST FOR WRITTEN TRANSCRIPT (RULE 165).

Upon request of a written transcript, the Board may provide a list of court reporting and transcribing services to the requesting party. Arrangements for preparation of transcript and payment of the fee will be made between the party requesting the transcript and the transcriber. The original tape recorded hearing transcript will remain with the Board until requested by the transcriber, or included in the official record transmitted to the district court. (2-18-05)

166. -- 999. (RESERVED)

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