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ARCHIVE

**IDAPA 33
TITLE 01
CHAPTER 02**

**33.01.02 - RULES OF PRACTICE AND PROCEDURE OF THE
IDAHO REAL ESTATE COMMISSION GOVERNING CONTESTED CASES**

RULES 000 THROUGH 010 -- GENERAL PROVISIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 54-2007, 54-2097, and 67-5206(5) Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 33.01.02, "Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases." (5-3-03)

02. Scope. These rules govern formal actions, contested cases and rulemaking before the Idaho Real Estate Commission. (5-3-03)

002. WRITTEN INTERPRETATIONS.

Written interpretations to these rules may be available in the form of explanatory comments from the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Suite 180, Boise ID 83706. (7-1-93)

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by this chapter. (7-1-93)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference. (5-3-03)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.

01. Office Hours. The office hours are 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. (5-3-03)

02. Mailing Address. The mailing address is 575 E. Parkcenter Blvd., Suite 180, Boise ID 83706. (5-3-03)

03. Street Address. The street address is 575 E. Parkcenter Blvd., Suite 180, Boise ID 83706. (5-3-03)

04. Telephone Numbers. The Commission can be reached by telephone at (208) 334-3285 and by fax at (208) 334-2050. A toll-free number for JTRS Relay Service (telecommunications for the hearing impaired) is 1-800-377-3529. (5-3-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Public Records Act, Title 9, Idaho Code. (5-3-03)

007. FINDINGS.

The Idaho Real Estate Commission finds that due to the size of this agency, the frequency and nature of its proceedings, it is in the best interests of the Commission and those it serves to decline to adopt the Attorney General's Administrative Procedures Rules, particularly regarding contested cases, IDAPA 04.11.01, Sections 000 through 799. Further, the Commission has promulgated and adopted its own Rules of Practice and Procedure, which are set forth herein, IDAPA 33.01.02, Rules of the Idaho Real Estate Commission. (7-1-93)

008. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Administrative Code.** The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. (7-1-93)
- 02. Agency.** The Idaho Real Estate Commission as created in Chapter 20, Title 54, Idaho Code. (7-1-93)
- 03. Agency Head.** The body of individuals appointed pursuant to Section 54-2005, Idaho Code, and in whom ultimate legal authority of the Commission is vested. (5-3-03)
- 04. Chairman.** Chairman of the Idaho Real Estate Commission. (7-1-93)
- 05. Commission.** Idaho Real Estate Commission. (7-1-93)
- 06. Contested Case.** A proceeding which results in the issuance of an order. (7-1-93)
- 07. Executive Director.** Executive director of the Idaho Real Estate Commission. (7-1-93)
- 08. Hearing Officer.** Person appointed by the executive director to hear contested cases before the agency. (7-1-93)
- 09. License.** A real estate broker, associate broker or salesman, corporate, limited liability company or partnership license as provided in Chapter 20, Title 54, Idaho Code. (7-1-96)
- 10. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)
- 11. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party. (7-1-93)
- 12. Person.** Any individual, partnership, corporation, limited liability company, association, governmental subdivision or agency, or public or private organization or entity of any character. (7-1-96)
- 13. Provision of Law.** The whole or a part of the state or federal constitution, or of any state or federal: (7-1-93)
- a.** Statute; or (7-1-93)
 - b.** Rule or decision of the court. (7-1-93)
- 14. Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes: (7-1-93)
- a.** Law or policy; or (7-1-93)
 - b.** The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (7-1-93)
 - i.** Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)
 - ii.** Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (7-1-93)
 - iii.** Intra-agency memoranda; or (7-1-93)

iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)

15. Rulemaking. The process for formulation, adoption, amendment or repeal of a rule. (7-1-93)

011. -- 099. (RESERVED)

RULES 100 THROUGH 108 -- MISCELLANEOUS PROVISIONS

100. FILING OF DOCUMENTS -- NUMBER OF COPIES.

All documents required to be filed with the agency under this chapter shall be filed with the executive director of the Idaho Real Estate Commission and shall include the original document and two (2) copies. (7-1-93)

101. REFERENCE TO AGENCY.

Reference to the agency in these rules includes the Commission, executive director, or hearing officer appointed by the agency. (7-1-93)

102. LIBERAL CONSTRUCTION.

The rules in this chapter shall be liberally construed to secure just, speedy, and economical determination of all issues presented to the agency. Except as required by a specific rule or by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary, or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (5-3-03)

103. COMMUNICATIONS WITH AGENCY.

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed. (7-1-93)

104. SERVICE BY AGENCY.

The agency may serve summonses, administrative complaints, and other documents by certified mail, return receipt requested, to a party's last known mailing address or by personal service upon the party, pursuant to Idaho Rules of Civil Procedure or by state statute. The agency must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (5-3-03)

105. COMPUTATION OF TIME.

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. (7-1-93)

106. FEES AND REMITTANCES.

Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. (7-1-93)

107. INFORMAL PROCEEDINGS.

The agency recognizes, and this rule encourages, the use of informal proceedings to settle or determine compliance with agency rules or other matters. The agency staff, acting through the executive director, may informally resolve matters under authority of this rule when such action does not require an order issued by the Commission. Persons affected by an agency action under this rule shall possess the right to a formal proceeding as provided under this chapter. (7-1-93)

108. FORMAL PROCEEDINGS.

Formal proceedings governed under this chapter are initiated by the filing of an administrative complaint, petition, or other pleading before the agency. (5-3-03)

109. -- 149. (RESERVED)

**RULES 150 THROUGH 152 -- SUBMISSION OF REPORT TO AGENCY HEAD
FOR ISSUANCE OF ADMINISTRATIVE COMPLAINT**

150. NOTICE/INVESTIGATION.

The Executive Director of the Commission, upon receipt of information or a written complaint from the public or as otherwise authorized by law, shall perform an investigation of the facts surrounding an alleged violation of the Real Estate License Law, Brokerage Representation Act or administrative rules of the Commission. (5-3-03)

151. INVESTIGATION/REPORT.

If, as a result of the investigation, the Executive Director determines a potential violation has occurred, the Executive Director shall prepare a written report for submission and review by the agency head for its determination whether to authorize the filing of an administrative complaint governed by the Real Estate License Law and the Commission's Rules of Practice and Procedure Governing Contested Cases. (5-3-03)

152. REPORT CONTENTS AND PROCEDURE.

The report submitted by the Executive Director to the agency head shall be in writing and signed by the executive director and shall contain a summary of alleged relevant facts determined through the investigation and a summary of potential violations committed by a licensee or other individual. Such report shall also contain a statement indicating whether a settlement had been offered prior to seeking authorization to file an administrative complaint. The report shall not disclose names, locations or other identifying information regarding the accused, nor shall the report make any reference to the penalty that Commission staff will seek or to the terms of any offered or potential settlement that may be negotiated in future. (5-3-03)

153. -- 199. (RESERVED)

RULES 200 THROUGH 211 -- PARTIES TO CONTESTED CASES

200. PARTIES TO CONTESTED CASES LISTED.

Parties to contested cases before the agency are called petitioners, complainants, respondents, or intervenors. On reconsideration or appeal the parties shall be called by their original titles. (7-1-93)

201. PETITIONERS.

Persons who seek affirmative relief from the agency or to modify, amend or stay existing orders or rules of the agency, or to clarify their rights or obligations under law administered by the agency are called "petitioners." (7-1-93)

202. COMPLAINANTS.

The agency when it charges a person(s) is called "complainant." (7-1-93)

203. RESPONDENTS.

Persons against whom administrative complaints are filed or about whom investigations are initiated are called "respondents." (5-3-03)

204. INTERVENORS.

Persons who are permitted to participate as parties pursuant to Sections 350 through 353 are called "intervenors." (5-3-03)

205. RIGHTS OF PARTIES AND OF AGENCY STAFF.

All parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-93)

206. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES.

The initial pleading of each party at the formal stage of a contested case must name the party's representative(s) for service and state the representative's(s') address(es) for purposes of receipt of all official documents. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the person signing the pleading will be considered the party's representative. (7-1-93)

207. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF.

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and participate in the same manner as a party. (7-1-93)

208. REPRESENTATION OF PARTIES AT HEARING.

01. Appearances and Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (7-1-93)

- a.** A natural person may represent himself or herself or be represented by a duly authorized employee or attorney. (7-1-93)
- b.** A partnership may be represented by a partner, duly authorized employee, or attorney. (7-1-93)
- c.** A corporation may be represented by an officer, duly authorized employee, or attorney. (7-1-93)
- d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (7-1-93)
- e.** A limited liability company may be represented by a member, a manager or a duly authorized employee or attorney. (7-1-96)

02. Out-of-State Attorneys. An attorney who is not an active member of the Idaho Bar may represent a party and appear before the agency if granted limited admission by the Idaho Bar in accordance with the procedure set forth in Rule 222 of the Idaho Bar Commission Rules, provided references in that rule to "the court" shall instead mean the agency. (3-29-10)

03. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (7-1-93)

209. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS.

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. (7-1-93)

210. WITHDRAWAL OF PARTIES.

Any party may withdraw from a proceeding in writing or at hearing. (7-1-93)

211. CONDUCT REQUIRED.

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (7-1-93)

212. -- 249. (RESERVED)

RULES 250 THROUGH 255 -- PLEADINGS IN GENERAL

250. PLEADINGS LISTED -- MISCELLANEOUS.

Pleadings in contested cases are called petitions, administrative complaints, motions, answers, and consent agreements. All pleadings except motions, exceptions, and those made by the agency shall be verified. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. (5-3-03)

251. PETITIONS -- DEFINED -- FORM AND CONTENTS.

- 01. Pleadings Defined.** All pleadings requesting the following are called "petitions": (7-1-93)
- a.** License, right, or authority; (7-1-93)
 - b.** Modification, amendment or stay of existing orders or rules; (7-1-93)
 - c.** Clarification, declaration or construction of the law administered by the agency or of a party's rights or obligations under law administered by the agency; (7-1-93)
 - d.** Affirmative relief, order, or rule; (7-1-93)
 - e.** Rehearing, or (7-1-93)
 - f.** Intervention; (7-1-93)
- 02. Petitions.** Petitions must: (7-1-93)
- a.** Fully state the facts upon which they are based; (7-1-93)
 - b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (7-1-93)
 - c.** State the relief desired. (7-1-93)

252. ADMINISTRATIVE COMPLAINTS -- DEFINED -- FORM AND CONTENTS.

- 01. Administrative Complaints Defined.** A pleading charging other person(s) with acts or omissions under law administered by the agency is called an "administrative complaint." (5-3-03)
- 02. Form and Contents.** Administrative Complaints must: (5-3-03)
- a.** Be in writing; (7-1-93)
 - b.** Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (7-1-93)
 - c.** Refer to statutes, rules, orders or other controlling law involved; (7-1-93)
 - d.** State the relief desired; and (7-1-93)
 - e.** State the name of the person complained against (the respondent). (7-1-93)

253. MOTIONS -- DEFINED -- FORM AND CONTENTS.

01. Motions Defined. All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” (7-1-93)

02. Form and Contents. Motions must: (7-1-93)

a. Fully state the facts upon which they are based; (7-1-93)

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; (7-1-93)

c. State the relief sought. (7-1-93)

03. Other. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. (7-1-93)

254. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING.
All pleadings responding to administrative complaints, petitions, or motions are called “answers.” (5-3-03)

01. Answers to Pleadings Other Than Motions. Answers to administrative complaints or petitions must be filed and served on all parties of record within twenty-one (21) days after service 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 shall take such action upon the default as set forth in Section 800 of this rule. Answers must admit or deny each material allegation of the administrative complaint or petition. Any material allegation not specifically admitted shall be considered to be denied. (5-3-03)

02. Answers to Motions. Answers to motions shall be filed by a party within fourteen (14) days of its service unless otherwise ordered. The person or party answering the motion must do so with all deliberate and reasonable speed. (7-1-93)

255. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS.
Agreements between the agency or agency staff and another person(s) in which one (1) or more person(s) agree to engage in certain conduct required by law or to refrain from engaging in certain conduct prohibited by law, are called “consent agreements.” Consent agreements are intended to require compliance with existing law. (7-1-93)

01. Requirements. Consent agreements must: (7-1-93)

a. Recite the parties to the agreement; and (7-1-93)

b. Fully state the conduct proscribed or prescribed by the consent agreement. (7-1-93)

02. Additional. In addition, consent agreements may: (7-1-93)

a. Recite the consequences of failure to abide by the consent agreement; (7-1-93)

b. Provide for payment of civil or administrative penalties authorized by law; (7-1-93)

c. Provide for loss of rights, licenses, awards or authority; (7-1-93)

d. Provide for other consequences as agreed to by the parties; and (7-1-93)

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (7-1-93)

256. -- 299. (RESERVED)

RULES 300 THROUGH 305 -- FILING, SERVICE, AMENDMENT OF DOCUMENTS

300. FILING DOCUMENTS WITH THE AGENCY--FACSIMILE TRANSMISSION (FAX).

An original and necessary copies of all documents intended to be part of an agency record must be filed with the executive director of the agency. (7-1-93)

301. FORM OF PLEADINGS.

01. Requirements for Submission of Forms. All pleadings shall: (7-1-93)

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; (7-1-93)

b. State the case caption, case number and title of the document; (7-1-93)

c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and fax number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (7-1-93)

d. Have at least one inch (1") left and top margins. (7-1-93)

02. Form. Documents complying with this rule will be in the following form:

BEFORE THE IDAHO REAL ESTATE COMMISSION

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
fax Number of Representative (if there is one)
Attorney/Representative for (Name of Party)
(Title of Proceeding)) CASE NO.
)
) (TITLE OF DOCUMENT)
) (7-1-93)

302. SERVICE ON PARTIES AND OTHER PERSONS.

All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing with the officer designated by the agency to receive filings in the case. (7-1-93)

303. PROOF OF SERVICE.

Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this _____ day of _____, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).

(Signature) (7-1-93)

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS.

Defective, insufficient or late pleadings may be returned or dismissed.

(7-1-93)

305. AMENDMENTS TO PLEADINGS.

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. (7-1-93)

306. -- 349. (RESERVED)

RULES 350 THROUGH 353 -- INTERVENTION

350. ORDER GRANTING INTERVENTION NECESSARY.

Persons who claim a direct and substantial interest in a proceeding may petition for an order from the presiding officer granting intervention to become a party. (7-1-93)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.

Petitions to intervene must comply with Section 031. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (7-1-93)

352. TIMELY FILING OF PETITIONS TO INTERVENE.

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. (7-1-93)

353. GRANTING PETITIONS TO INTERVENE.

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. (7-1-93)

354. -- 399. (RESERVED)

RULES 400 THROUGH 402 -- DECLARATORY RULINGS AND ORDERS

400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS.

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. (7-1-93)

01. Form. The petition shall: (7-1-93)

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

b. State the declaratory ruling that the petitioner seeks; and (7-1-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

401. NOTICE OF PETITION FOR DECLARATORY RULING.

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. (7-1-93)

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER.

01. Final Agency Action. The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. (7-1-93)

02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final agency action issuing a declaratory ruling; (7-1-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: (7-1-93)

i. A hearing was held; (7-1-93)

ii. The declaratory ruling was issued; or (7-1-93)

iii. The party appealing resides. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of the declaratory ruling. See Section 67-5273, Idaho Code. (7-1-93)

403. -- 449. (RESERVED)

RULES 450 THROUGH 460 -- HEARING OFFICERS AND PRESIDING OFFICERS

450. APPOINTMENT OF HEARING OFFICERS.

A hearing officer is a person other than the agency head appointed to serve as the presiding officer in a contested cases on behalf of the agency. Agency heads are not hearing officers, even if presiding at contested cases. The term "hearing officer" as used in these rules refers to only to officers subordinate to the agency head. (5-3-03)

451. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.

Pursuant to Section 67-5252, Idaho Code, parties have the right to seek disqualification of the presiding officer as follows: (5-3-03)

01. Disqualification Without Cause. Any party shall have the right to one (1) disqualification without cause of any person designated to serve as presiding officer by filing a petition for disqualification within fourteen (14) days after receipt of notice indicating that the person will preside in the contested case. (5-3-03)

02. Disqualification for Cause. Any party shall have a right to move to disqualify the person serving or designated to serve as presiding officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification for cause of a presiding officer after receiving notice that the person will preside at a contested case or upon discovering facts establishing grounds for the disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation of a presiding officer. (5-3-03)

03. Determination of Petition. A person whose disqualification is requested for cause shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer's determination. (5-3-03)

04. Disqualification of Agency Heads. Requests for the disqualification of agency heads shall be

determined pursuant to Sections 59-704 and 67-5252(4), Idaho Code. (5-3-03)

05. Notice Designating Presiding Officer. The notice designating the person to serve as presiding officer shall contain a notice of the parties' rights to petition for disqualification of the person, the grounds upon which disqualification may be sought, and the time periods within which any petition seeking disqualification must be filed. (5-3-03)

452. SCOPE OF AUTHORITY OF HEARING OFFICERS.

The scope of hearing officers' authority may be restricted in the appointment by the agency. (7-1-93)

01. Scope of Authority. Unless the agency otherwise provides, hearing officers have the standard scope of authority, which is: (7-1-93)

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; (7-1-93)

b. Authority to schedule and compel discovery, when discovery is authorized before the agency; (7-1-93)

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and (7-1-93)

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended orders by the hearing officer. (7-1-93)

453. PRESIDING OFFICER(S).

One (1) or more members of the Commission, the executive director, or duly appointed hearing officers may preside at the hearing as authorized by statute or rule. When more than one (1) officer sits at the hearing, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. (7-1-93)

454. EX PARTE COMMUNICATIONS.

A presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). (7-1-93)

455. ADJUDICATORY FUNCTIONS.

Where Section 54-2058, Idaho Code assigns to the Commission both the authority to initiate formal administrative complaints against a licensee or other individual for practicing without a license, and the authority to decide the merits of such complaints, the Commission is required to perform two (2) distinct functions: prosecutorial/investigative and adjudicatory. In light of these dual functions, Rules 455 through 460 set forth procedures to be followed by the agency head, Commission attorneys, Commission staff (including the Executive Director) and hearing officers in processing these complaints or responding to citizen inquiries. (5-3-03)

01. Prosecutorial/Investigative Function. The investigative function can be performed exclusively by Commission prosecuting attorneys and Commission staff. The agency head or its individual members may participate in or supervise investigations preceding its decision whether to authorize the filing of an administrative complaint and shall determine whether an administrative complaint may be filed; however, the agency head or its individual members shall not participate in the prosecution of any administrative complaint. The investigative function includes gathering of evidence outside of formal contested case proceedings and presentation of allegations or evidence to the agency head for determination whether to authorize the filing of an administrative complaint. The prosecutorial function includes presentation of evidence or argument and briefing on the record in a formal contested case proceeding. (5-3-03)

02. Adjudicatory Function. The adjudicatory function is performed by the agency head. The adjudicatory function includes: (5-3-03)

- a. Deciding whether to authorize the filing of an administrative complaint upon the basis of allegations submitted in the Executive Director's report, as provided for in Section 54-2058(1), Idaho Code; (5-3-03)
- b. Deciding whether to accept a consent agreement or other settlement of an administrative complaint; and (5-3-03)
- c. Deciding the merits of an administrative complaint following presentation of evidence in formal contested case proceedings. The adjudicatory function also includes Commission administrative attorneys' advice to the agency head in the performance of any adjudicatory functions. (5-3-03)

456. (RESERVED)

457. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS BEFORE AN ADMINISTRATIVE COMPLAINT IS FILED.

This rule sets forth procedures to be followed when a consent agreement or other settlement is negotiated before an administrative complaint is filed. (5-3-03)

01. Negotiations. As authorized by the Commission, an attorney assigned to a prosecutorial/investigative role or the Commission staff may negotiate consent agreements or other settlements with any person who might later be the subject of an administrative complaint. No member of the agency head, no attorney assigned to advise or assist the agency head in its adjudicatory function (administrative attorney), and no hearing officer may participate in these negotiations, but the agency head may have rules or guidelines for issuance of consent agreements and other settlements, or may have other general policy statements available to guide individual negotiations. (5-3-03)

02. Presentation of Agreement to Agency Head. Any consent agreement or other settlement agreement negotiated pursuant to this rule must be presented to the agency head for hearing and approval. Any agreement presented to the agency head must be served on all parties and on the Commission staff. (5-3-03)

03. Agency Head Consideration of Agreement. A consent agreement or other settlement agreement that is presented to the agency head for approval must be reviewed under this rule. The agency head must accept or reject the agreement. In rejecting an agreement, the agency head may indicate how the agreement may be modified to be acceptable, or inform the parties what further information is required for the agency head's consideration of the agreement. When an agreement is rejected, no matter recited in the rejected agreement may be used as an admission against a party in any later proceeding before the Commission, and any such matter must be proven by evidence independent of the agreement. (5-3-03)

458. PROCEDURES AFTER THE AGENCY HEAD HAS AUTHORIZED FILING OF AN ADMINISTRATIVE COMPLAINT AND BEFORE THE AGENCY HEAD HAS CONSIDERED THE MERITS OF THE COMPLAINT.

This rule sets forth procedures to be followed by the agency head, its individual members, Commission prosecuting attorneys, Commission administrative attorneys, Commission staff and hearing officers after the agency head has authorized the filing of an administrative complaint, while investigation or discovery is underway, while a hearing is conducted, and before the recommended order of the hearing officer is submitted to the agency head. (5-3-03)

01. The Agency Head. (5-3-03)

a. Prohibited Contacts--Allowable Managerial Reporting. Except as authorized by statute, neither the agency head nor its individual members shall discuss the substance of the administrative complaint ex parte with any party or with any representative of the party or with Commission prosecuting attorneys or Commission staff involved in the prosecution or investigation of the complaint. The agency head may request periodic progress reporting on staff preparation from the Executive Director or other staff member involved in the investigation/prosecution so long as such progress reports do not relate to the substance of the complaint. For example, the agency head may ask whether the Commission staff will be prepared to present its case by a given date. As required to perform statutory supervisory duties, the agency head may approve or disapprove expenditures associated with the prosecution, authorize retention of experts or outside counsel for the prosecution, address policy issues that may affect the

prosecution, and otherwise discharge the agency head's statutory management and supervisory duties. (5-3-03)

b. Allowed Contacts. The agency head may discuss the substance of the administrative complaint with Commission administrative attorneys and Commission staff who are not involved in the prosecution or investigation of the administrative complaint. (5-3-03)

02. The Commission Attorney. (5-3-03)

a. Prosecutorial/Investigative Attorneys. Except as specifically authorized by these rules, no Commission attorney involved in the investigation or prosecution of an administrative complaint shall discuss the substance of the complaint ex parte with the agency head or its members, a hearing officer assigned to hear the administrative complaint, or with any Commission administrative attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint. (5-3-03)

b. Administrative Attorneys. Except as specifically authorized by these rules, no Commission attorney assigned to advise or assist the agency head or hearing officer shall discuss the substance of the administrative complaint ex parte with any representative of any party or with Commission prosecuting attorneys or Commission staff involved in the prosecution or investigation of the complaint. A Commission administrative attorney assigned to advise or assist the agency head or hearing officer may discuss the substance of the complaint with the hearing officer or agency head. (5-3-03)

03. The Commission Staff. (5-3-03)

a. Prosecutorial/Investigative Staff. Except as specifically authorized by these rules, no member of the Commission staff involved in the investigation or prosecution of the administrative complaint shall discuss the substance of the administrative complaint ex parte with the agency head or its members, a hearing officer assigned to hear the administrative complaint, or with any Commission administrative attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint, except as specifically provided for in these Rules. (5-3-03)

b. Advisory Staff. Except as specifically authorized in these rules, no Commission staff assigned to advise or assist the agency head or hearing officer shall discuss the substance of the administrative complaint ex parte with any representative of any party or with Commission attorneys or Commission staff involved in the prosecution or investigation of the administrative complaint. Commission staff assigned to advise or assist the agency head or hearing officer may discuss the substance of the administrative complaint with the hearing officer or agency head. (5-3-03)

04. Hearing Officers. Hearing officers may discuss the substance of the administrative complaint with attorneys of the Commission assigned to advise or assist the hearing officer and with other hearing officers. No hearing officer shall discuss the substance of the administrative complaint ex parte with any party or representative of any party or with Commission administrative or prosecuting attorneys or Commission staff involved in the prosecution or investigation of the complaint. (5-3-03)

459. HEARING OFFICERS.

No hearing officer may discuss the substance of an administrative complaint ex parte with any Commission prosecuting or administrative attorney or Commission staff involved in the investigation or prosecution of the complaint, with any representative of any party, or with any member of the public at large at any stage of the Commission's consideration of the complaint or pending judicial review of the Commission's decision in the complaint, except as allowed in these rules. A hearing officer may consult with any other hearing officer. A hearing officer may consult with a Commission attorney assigned to advise or assist the hearing officer. The agency head may appoint as a hearing officer the Commission attorney who will advise or assist the agency head in consideration of the complaint, but this Commission attorney cannot participate in the prosecution of the complaint or have ex parte contact with any party to the complaint or the Commission's prosecutorial/investigative staff. (5-3-03)

460. AGENCY HEAD'S CONSIDERATION OF RECOMMENDED ORDER.

This rule sets forth procedures to be followed by the agency head, Commission prosecuting and administrative attorneys, Commission staff, and hearing officers after the hearing officer's recommended order has been placed

before the agency head for review.

(5-3-03)

01. The Agency Head. In considering the hearing officer's recommended order, the agency head may consult with an administrative attorney assigned to advise or assist the agency head and with Commission staff who did not participate in the investigation or prosecution of the administrative complaint. The agency head shall not discuss the substance of the complaint ex parte with any representative of any party or with Commission prosecuting attorneys or Commission staff involved in the prosecution or investigation of the administrative complaint. (5-3-03)

02. The Commission Attorney. (5-3-03)

a. Prosecutorial/Investigative Attorneys. No Commission attorney involved in the investigation or prosecution of an administrative complaint shall consult with the agency head or its members considering the hearing officer's recommended order, except as provided in specifically provided in these rules. A Commission prosecuting attorney who was involved in the investigation or prosecution of the administrative complaint may attend public meetings of the Commission that consider administrative complaints and may respond to questions from the agency head so long as the meetings have been noticed to all parties and all parties have the same opportunity to respond to questions from the agency head as the Commission's prosecutorial/investigative attorneys. (5-3-03)

b. Administrative Attorneys. A Commission administrative attorney assigned to advise or assist the agency head in consideration of the administrative complaint may consult with the agency head in preparation for or while the agency head is considering the hearing officer's recommended order or draft final order. (5-3-03)

03. The Commission Staff. (5-3-03)

a. Prosecutorial/Investigative Staff. No member of the Commission staff involved in the investigation or prosecution of the administrative complaint shall consult with the agency head, or its individual members, in its consideration of the recommended order, but a member of the Commission staff who participated in the investigation or prosecution of the complaint may provide technical computations at the direction of the agency head as provided for by these rules. (5-3-03)

b. Advisory Staff. Any member of the Commission staff assigned to advise or assist the Commission may consult with the agency head at the agency head's direction. (5-3-03)

04. Hearing Officers. No hearing officer shall consult with any person other than the agency head or attorneys assigned to advise or assist the agency head during the agency head's consideration of the hearing officer's recommended order. (5-3-03)

461. -- 499. (RESERVED)

RULES 500 THROUGH 502 -- PREHEARING CONFERENCES

500. PURPOSES OF PREHEARING CONFERENCES.

The presiding officer may by order or notice issued to all parties convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-93)

501. NOTICE OF PREHEARING CONFERENCE.

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. (7-1-93)

502. ORDERS RESULTING FROM PREHEARING CONFERENCE.

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (7-1-93)

503. -- 549. (RESERVED)

RULES 550 THROUGH 560 -- DISCOVERY

550. KINDS AND SCOPE OF DISCOVERY LISTED.

The kinds of discovery recognized and authorized by these rules in contested cases are depositions, requests for admission, production requests, statutory inspection, survey, audit and investigation, and subpoenas. Unless otherwise provided by statute, rule, order or notice, when discovery is authorized before the agency, the scope of discovery, other than statutory inspection, survey, audit and investigation, is governed by the Idaho Rules of Civil Procedure. (5-3-03)

551. WHEN DISCOVERY AUTHORIZED.

Parties may agree between or among themselves to provide for discovery without reference to an agency's statutes, rules of procedure, or orders. Otherwise no party before the agency is entitled to engage in discovery unless discovery is authorized before the agency, the party moves to compel discovery, and the agency issues an order directing that the discovery be answered. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The commission or commission staff may conduct statutory inspection, survey, audit and investigation as authorized by Section 54-2058, Idaho Code, at any time without filing a motion to compel discovery. (5-3-03)

552. RIGHTS TO DISCOVERY RECIPROCAL.

All parties to a proceeding have a right of discovery of all other parties to a proceeding as allowed by Rule 551 and the agency's authorizing statutes and rules. Rules 552 through 599 set forth the scope of various forms of discovery when those forms of discovery are authorized before the agency, but do not create an independent right of discovery. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (5-3-03)

553. DEPOSITIONS.

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 agency. (7-1-93)

554. PRODUCTION REQUESTS AND REQUESTS FOR ADMISSION.

Production requests and requests for admission may be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (5-3-03)

555. SUBPOENAS.

The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (7-1-93)

556. STATUTORY INSPECTION, SURVEY, AUDIT AND INVESTIGATION.

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, survey, audit and investigation as authorized in Section 54-2058, Idaho Code. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, survey, audit or investigation, may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. (5-3-03)

557. ANSWERS TO PRODUCTION REQUESTS AND TO REQUESTS FOR ADMISSION.

Answers to production requests and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. (5-3-03)

558. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS.

Notice of any discovery in a contested case, their response or objection, shall be filed or served as provided by the order compelling discovery. Responses must conform to the requirements of the Idaho Rules of Civil Procedure. (5-3-03)

559. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY.

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (7-1-93)

560. PROTECTIVE ORDERS.

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. (7-1-93)

561. -- 599. (RESERVED)

RULES 600 THROUGH 612 -- HEARINGS -- MISCELLANEOUS PROCEDURE

600. NOTICE OF HEARING.

Notice of the place, date and hour of hearing shall be served on all parties at least twenty-one (21) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements for pleadings under these rules. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (7-1-93)

601. HOW HEARINGS HELD.

Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (7-1-93)

602. CONDUCT AT HEARINGS.

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. (7-1-93)

603. PRELIMINARY PROCEDURE AT HEARING.

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (7-1-93)

604. STIPULATIONS.

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (7-1-93)

605. ORDER OF PROCEDURE.

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (7-1-93)

606. 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. (7-1-93)

607. PARTIES AND PERSONS WITH SIMILAR INTERESTS.

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (7-1-93)

608. CONTINUANCE OF HEARING.

The presiding officer may continue proceedings for further hearing. (7-1-93)

609. RULINGS AT HEARINGS.

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and the presiding officer may refer or defer rulings to the agency head for determination. (7-1-93)

610. ORAL ARGUMENT.

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (7-1-93)

611. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER.

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. (7-1-93)

612. PROCEDURE ON PREHEARING MOTIONS.

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond. (7-1-93)

613. -- 649. (RESERVED)

RULES 650 THROUGH 654 -- EVIDENCE IN CONTESTED CASES

650. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE.

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. (7-1-93)

651. DOCUMENTARY EVIDENCE.

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. (7-1-93)

652. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA.

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. (7-1-93)

653. DEPOSITIONS.

Depositions may be offered into evidence. (7-1-93)

654. OBJECTIONS.

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head. (7-1-93)

655. -- 699. (RESERVED)

RULES 700 THROUGH 701 -- SETTLEMENTS

700. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS.

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. (7-1-93)

701. 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. (7-1-93)

702. -- 749. (RESERVED)

RULES 750 THROUGH 751 -- RECORD FOR DECISIONS

750. RECORD FOR DECISION.

01. Requirement. The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. (7-1-93)

02. Contents. The record for a contested case shall include: (7-1-93)

a. All notices of proceedings; (7-1-93)

b. All petitions, administrative complaints, motions, and answers filed in the proceeding; (5-3-03)

c. All intermediate or interlocutory rulings of hearing officers or the agency head; (7-1-93)

d. All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (7-1-93)

e. 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; (7-1-93)

f. All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)

- g.** All staff memoranda or data submitted in connection with the consideration of the proceeding; (7-1-93)
- h.** A statement of matters officially noticed; and (7-1-93)
- i.** All recommended orders, final orders, and orders on reconsideration. (7-1-93)

751. RECORDING OF HEARINGS.

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. (7-1-93)

752. -- 799. (RESERVED)

**RULES 800 THROUGH 805 -- DEFAULTS,
AGENCY ORDERS, AND REVIEW OF AGENCY ORDERS**

800. DEFAULT PROCEEDINGS.

If the respondent fails to file an answer to an administrative complaint or petition within the time required by these rules, or if a party fails to appear at the time and place set for hearing, upon proof of service upon the defaulting party, the presiding officer shall serve upon all parties notice of a proposed default order. The notice shall include a statement of the grounds for the proposed order. Within seven (7) days after service of the proposed order, the party against whom it was issued may file a written petition requesting the proposed order be vacated. The petition shall state the grounds relied upon. The presiding officer shall either issue or vacate the default order promptly after expiration of the time within which the party may file a petition. Notwithstanding the above, the presiding officer shall have authority to receive evidence at the hearing where a party fails to appear after having been served with notice of hearing. (5-3-03)

801. RECOMMENDED ORDERS.

01. Definition. Recommended orders are orders issued by a hearing officer and will become a final order of the agency only after review of the agency head. (5-3-03)

02. Content. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (7-1-93)

b. Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding. (7-1-93)

c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one (21) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (7-1-93)

03. Findings and Conclusions. Recommended orders shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. (7-1-93)

802. FINAL ORDERS.

01. Definition. Final orders are orders issued by the agency head pursuant to Section 67-5246, Idaho Code. (7-1-93)

02. Content. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. (7-1-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

i. A hearing was held; (7-1-93)

ii. The final agency action was taken; or (7-1-93)

iii. The party seeking review of the order resides. (7-1-93)

c. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

03. Findings and Conclusions. Recommended orders shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. (7-1-93)

803. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION.

A hearing officer issuing a recommended order may modify the recommended order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended order by withdrawing the recommended order and issuing a substitute recommended order. The agency head may modify or amend a final order of the agency at any time before notice of appeal to district court has been filed or the expiration of the time for appeal to district court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. (7-1-93)

804. CLARIFICATION OF ORDERS.

Any party or person affected by an order may petition to clarify any order, whether recommended or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. (7-1-93)

805. STAY OF ORDERS.

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. (7-1-93)

806. -- 849. (RESERVED)

RULES 850 THROUGH 851 -- APPEAL TO DISTRICT COURT

850. PERSONS WHO MAY APPEAL.

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

851. NOTICE OF APPEAL.

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

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

- a.** The hearing was held; (7-1-93)
- b.** The final agency action was taken; or (7-1-93)
- c.** The party seeking review of the agency action resides. (7-1-93)

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

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

852. -- 999. (RESERVED)

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