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IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

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**IDAPA 59
TITLE 01
CHAPTER 01**

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

**59.01.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE PUBLIC
EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

**Subchapter A -- General Provisions
(Rules 0 Through 99 -- General Provisions)**

000. LEGAL AUTHORITY (RULE 0).

All PERSI rules are adopted under the legal authority of Sections 50-1507, 50-1508, 50-1524, 59-1301, 59-1314, 59-1372, 59-1383, 59-1392, and 72-1405, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is PERSI Rules of Administrative Procedure. (7-1-93)

01. Opt Out of Attorney General's Rules -- Table. PERSI declines to adopt the following Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01, as follows for the reasons listed:

RULE SECTION(S)	RULE REASON
051	This rule is combined with Rule 5.
151, 155, 156	PERSI procedure uses "petitioners" rather than protestants, "applicants," "claimants," "appellants," "protestants," or "intervenors".
158	This rule is combined with Rule 5.
220, 250	PERSI contested cases refer to "petitions" rather than "applications," "claims," "appeals," or "protests".
303	This rule is combined with Rule 55.
350 - 355	PERSI procedure does not separately use intervention. Such a procedure would be available pursuant to petition without need for special provisions.
400 - 402	These rules are combined with Rule 230.
410, 414	These rules are combined with Rule 5.
565	This rule is combined with Rule 260.
566	PERSI does not hold joint hearings.
610	This rule is combined with Rule 502.
730	PERSI statutes do not provide for preliminary orders.

(7-1-93)

02. Incorporation by Reference. PERSI adopts through incorporation by reference as if set forth fully herein, the following Idaho Rules of Administrative Procedure IDAPA 04.11.01, adopted by the Attorney General on March 24, 1993 (IDAPA 04.11.01): 004, 052, 100, 101, 103, 104, 153, 154, 157, 201, 203 -- 206, 240, 280, 304, 416, 417, 500, 501, 510 -- 513, 520, 522 -- 524, 526, 530, 553 -- 555, 558 -- 564, 600 -- 605, 611 -- 614, 651, 701, 702, 710, 720, 780, 791, 800, 810, 812, 814, 815, 820, 822, 832, 834, 840, 850, and 860. (7-1-93)

03. Obtaining Copies of IRAP. An official copy of the Idaho Rules of Administrative Procedure of the Attorney General can be obtained through the Office of the Administrative Rules Coordinator at the Department of

Administration and the Idaho Legislative Council. (7-1-93)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

Written interpretations of these rules, to the extent they exist, are available from PERSI, at the following locations:

PERSI Boise Office
607 North Eighth Street
Boise, Idaho 83702
Phone: 208/334-3365 or 1-800-451-8228
Fax: 208/334-4026

PERSI Pocatello Office
850 E. Center, Suite D
Pocatello, Idaho 83201
Phone: 208/236-6225 or 1-800-762-8228
Fax: 208/236-6159

PERSI Coeur d'Alene Office
2005 Ironwood Parkway, Suite 142
Coeur d'Alene, Idaho 83814
Phone: 208/769-1474 or 1-800-962-8228
Fax: 208/769-1476

(5-6-94)

003. ADMINISTRATIVE APPEAL (RULE 3).

Administrative appeals are conducted pursuant to Rules 101 through 104 and 150 through 789. (7-1-93)

004. IDAPA 04.11.01.004. (RULE 4).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

005. DEFINITIONS (RULE 5).

As used in this chapter: (7-1-93)

01. Administrative Code. The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. (7-1-93)

02. Agency. The retirement board (Board) of the Public Employee Retirement System of Idaho (PERSI) or its delegates, including the executive director who is secretary to the Board. (7-1-93)

03. Agency Action. Agency action means: (7-1-93)

a. The whole or part of a rule or order; (7-1-93)

b. The failure to issue a rule or order; or (7-1-93)

c. An agency's performance of, or failure to perform, any duty placed on it by law. (7-1-93)

04. Agency Head. The Board or its delegates. (7-1-93)

05. Board. The PERSI retirement board. (7-1-93)

06. Bulletin. The Idaho administrative bulletin established in Chapter 52, Title 67, Idaho Code. (7-1-93)

07. Contested Case. A proceeding which results in the issuance of an order. (7-1-93)

08. Coordinator. The administrative rules coordinator prescribed in Section 67-5202, Idaho Code. (7-1-93)

- 09. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
- 10. Executive Director.** The executive director serving at the pleasure of the Board, or the director's delegee. (7-1-93)
- 11. Hearing Officer(s).** A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. (7-1-93)
- 12. Official Text.** The text of a document issued, prescribed, or promulgated by the agency in accordance with this chapter, and is the only legally enforceable text of such document. (7-1-93)
- 13. 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)
- 14. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (7-1-93)
- 15. Person.** Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (7-1-93)
- 16. Presiding Officer(s).** One (1) or more members of the Board, the executive director, or duly appointed hearing officers may preside at hearing as authorized by the Board. When more than one officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer. (7-1-93)
- 17. Provision of Law.** The whole or a part of the state or federal constitution, or of any state or federal:
- a.** Statute; or (7-1-93)
 - b.** Rule or decision of the court. (7-1-93)
- 18. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (7-1-93)
- 19. 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:
- 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 Sections 59-1314 and 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)

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

21. Secretary. The PERSI executive director or the director's delegee. (7-1-93)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 59.01.01.000 et seq. For example, this section's citation is IDAPA 59.01.01.006. In documents submitted to PERSI or issued by PERSI, these rules may be cited as PERSI RAP (Rules of Administrative Procedure) and action number less leading zeroes. For example, this rule may be cited as PERSI RAP 6. (7-1-93)

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 7).

PERSI Office hours are 8 a.m. to 5 p.m. Monday through Friday. PERSI's mailing and street addresses, telephone numbers, and FAX numbers are as follows:

PERSI Boise Office
607 North Eighth Street
Boise, Idaho 83702
Phone: 208/334-3365 or 1-800-451-8228
FAX: 208/334-4026

PERSI Pocatello Office
850 E. Center, Suite D
PO Box 1058
Pocatello, ID 83201
Phone: 208/236-6225 or 1-800-762-8228
FAX: 208/236-6159

PERSI Coeur d'Alene Office
2005 Ironwood Parkway, Suite 142
Coeur d'Alene, ID 83814
Phone: 208/769-1474 or 1-800-962-8228
FAX: 208/769-1476

(5-6-94)

008. FILING OF DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) (RULE 8).

An original and two (2) copies of all documents in rulemaking or contested cases must be filed with the secretary or with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX). Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (7-1-93)

009. EFFECTIVE DATE (RULE 9).

Unless otherwise indicated in the bracketed material following each rule, the effective date of every rule in this chapter is July 1, 1993. (7-1-93)

010. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure in informal proceedings and contested cases unless otherwise provided by notice or order. Rules 800 through 860 govern rulemaking unless otherwise provided by rule or notice. (7-1-93)

051. (RESERVED)

052. IDAPA 04.11.01.052 (RULE 52).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

053. COMMUNICATIONS WITH AGENCY -- IDENTIFICATION -- FILING (RULE 53).

All written communications and documents that are intended to be a part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Communications addressing or pertaining to a given proceeding must be written under that proceeding's case caption and case number if assigned. Otherwise, such communications must specifically refer to the subject matter. 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)

054. SERVICE ON PARTIES AND OTHER PERSONS (RULE 54).

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 a contested case, when a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties.

(7-1-93)

055. PROOF OF SERVICE (RULE 55).

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) or titles 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)
(Title)

(7-1-93)

056. SERVICE BY AGENCY (RULE 56).

Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, summonses, complaints, and orders issued by the agency may serve these documents by United States mail, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a State employee or State agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices 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.

(7-1-93)

057. COMPUTATION OF TIME (RULE 57).

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)

058. FEES AND REMITTANCES (RULE 58).

Fees and remittances to the agency must be paid by: electronic transfer, money order, bank draft or check payable to PERSI. 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)

059. -- 099. (RESERVED)

Subchapter B -- Contested Cases

**Contested Cases
Rule 100 Through 800
Definitions and General Provisions
Rules 101 Through 400
Informal and Formal Proceedings
Rules 101 Through 150**

- 100. IDAPA 04.11.01.100 (RULE 100).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 101. IDAPA 04.11.01.101 (RULE 101).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 102. FURTHER PROCEEDINGS (RULE 102).**
Any person aggrieved by any otherwise final decision or inaction of the Board, before filing an appeal to district court, must initiate a formal proceeding before the Board in accordance with the requirements of Rule 104. (7-1-93)
- 103. IDAPA 04.11.01.103 (RULE 103).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 104. IDAPA 04.11.01.104 (RULE 104).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 105. -- 149. (RESERVED)**

**Parties to Contested Cases -- Other Persons
Rules 150 Through 199**

- 150. PARTIES TO CONTESTED CASES LISTED (RULE 150).**
Parties to contested cases before the agency are called petitioners, complainants or respondents. On reconsideration or appeal within the agency, parties are called by their original titles listed in the previous sentence. (7-1-93)
- 151. (RESERVED)**
- 152. PETITIONERS (RULE 152).**
Persons who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case, or to otherwise take action that will result in the issuance of an order or rule, are called "petitioners". (7-1-93)
- 153. IDAPA 04.11.01.153 (RULE 153).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 154. IDAPA 04.11.01.154 (RULE 154).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 155. -- 156. (RESERVED)**
- 157. IDAPA 04.11.01.157 (RULE 157).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 158. -- 199. (RESERVED)**

Representatives of Parties

Rules 200 Through 209

200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).

The initial pleading of each party at the formal stage of a contested case (petition, complaint, motion, or answer) 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)

201. IDAPA 04.11.01.201 (RULE 201).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

202. REPRESENTATION OF PARTIES AT HEARING (RULE 202).

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. Natural person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, family member or friend. (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)

02. 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)

203. IDAPA 04.11.01.203 (RULE 203).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

204. IDAPA 04.11.01.204 (RULE 204).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

205. IDAPA 04.11.04.205 (RULE 205).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

206. IDAPA 04.11.01.206 (RULE 206).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

207. -- 209. (RESERVED)

**Pleadings -- In General
Rules 210 Through 299**

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases include, but are not limited to petitions, complaints, motions, answers, consent agreements, briefs, memoranda, statements of position, and orders. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 305. A party may adopt or join any other party's pleading. Two or more separately stated grounds, claims or answers concerning the same subject matter may be included in one pleading. (7-1-93)

211. -- 229. (RESERVED)

230. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 230).

- 01. Pleadings Defined.** All pleadings requesting the following are called “petitions”: (7-1-93)
- a.** Modification, amendment or stay of existing orders or rules; (7-1-93)
 - b.** 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; or (7-1-93)
 - c.** Rehearing or reconsideration. (7-1-93)
- 02. Petitions.** Petitions must: (7-1-93)
- a.** 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; (7-1-93)
 - c.** State the relief desired; and (7-1-93)
 - d.** State the name of the person petitioned against (the respondent), if any. (7-1-93)
- 03. Form and Contents of Petition of 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)
- a.** Form. The petition shall: (7-1-93)
 - i.** Identify the petitioner and state the petitioner’s interest in the matter; (7-1-93)
 - ii.** State the declaratory ruling that the petitioner seeks; and (7-1-93)
 - iii.** 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)
 - b.** Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

231. -- 239. (RESERVED)

240. IDAPA 04.11.01.240 (RULE 240).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

241. -- 259. (RESERVED)

260. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING -- PROCEDURE (RULE 260).

- 01. 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; and (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. Any motion to dismiss, strike or limit a complaint or petition must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 260.04. (7-1-93)

04. Procedure on 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)

261. -- 269. (RESERVED)

270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).

All pleadings responding to the allegations or requests of complaints, petitions, or motions are called "answers". (7-1-93)

01. Answers to Pleadings Other Than Motions. Answers to complaints, petitions or appeals must be filed and served on all parties of record within twenty-eight (28) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or, a motion to dismiss is made within twenty-eight (28) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Rule 702. Answers must admit or deny each material allegation of the complaint or petition. 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. (7-1-93)

02. Answers to Motions. Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion. The person or party answering the motion must do so with all deliberate and reasonable speed. In no event is a party entitled to more than fourteen (14) days to answer a motion or to move for additional time to answer. The presiding officer may act upon a prehearing motion under Rule 260.04. (7-1-93)

271. -- 279. (RESERVED)

280. IDAPA 04.11.01.280 (RULE 280).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

281. -- 299. (RESERVED)

**Filing, Service, Amendment and Withdrawal of Documents
Rules 300 Through 349**

300. (RESERVED)

301. FORM OF PLEADINGS (RULE 301).

All pleadings submitted by a party and intended to be part of an agency record must comply with the following: (7-1-93)

01. Requirements. Pleadings must: (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:

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)

BEFORE THE RETIREMENT BOARD
OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

)
In re the Matter of) CASE NO.
)
) (TITLE OF DOCUMENT)
(7-1-93)

302. -- 303. (RESERVED)

304. IDAPA 04.11.01.304 (RULE 304).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

305. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 305).
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 may be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. (7-1-93)

306. -- 399. (RESERVED)

**Hearing Officers -- Presiding Officers
Rules 400 Through 499**

400. -- 411. (RESERVED)

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).
Pursuant to Section 67-5252, Idaho Code, persons designated as presiding officers are subject to disqualification 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 petition for the disqualification of a hearing officer. However, the petition must be filed not later than fourteen (14) days after

receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, prior to the designation of presiding officer(s). A presiding officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer's determination. Challenge to an agency head must be made pursuant to Sections 59-704 and 67-5252(4), Idaho Code. (7-1-93)

413. SCOPE OF AUTHORITY OF PRESIDING OFFICERS (RULE 413).

The scope of presiding officers' authority may be restricted in the appointment by the agency. Unless the agency otherwise provides, presiding officers have the standard scope of authority, which is: (7-1-93)

01. Schedule Cases. Authority to schedule cases assigned to the presiding officers including authority to issue notices of prehearing conference and of hearing, as appropriate. (7-1-93)

02. Schedule and Compel Discovery. Authority to schedule and compel discovery when discovery is authorized before the agency, and to require advance filing of expert testimony when authorized before the agency. (7-1-93)

03. Conduct Hearings. Authority to preside at and conduct hearings, administer oaths, accept evidence into the record, rule upon objections to evidence, preserve and enforce order, issue subpoenas for and to compel the attendance of witnesses or the production of books, papers, documents and other evidence, and, to examine witnesses. (7-1-93)

04. Issue Decisions for Review. Authority to issue a written decision for review and confirmation by the Board, including a narrative of the proceedings before the presiding officer and findings of fact, conclusions of law, and recommended or preliminary orders. (7-1-93)

414. (RESERVED)

415. CHALLENGES TO STATUTES (RULE 415).

A presiding officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the presiding officer, then the officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the officer and decide the proceeding in accordance with the precedent of the court or the preemptive action of the federal authority. (7-1-93)

416. IDAPA 04.11.01.416 (RULE 416).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

417. IDAPA 04.11.01.417 (RULE 417).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

418. -- 499. (RESERVED)

**Post-Pleading Procedure
Rules 500 Through 699
Alternative Dispute Resolution (ADR)
Rules 500 Through 509**

500. IDAPA 04.11.01.500 (RULE 500).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

501. IDAPA 04.11.01.501 (RULE 501).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

502. PRIVILEGE (RULE 502).

Communications in an ADR proceeding, including facts disclosed, offers made and all other aspects of the proceeding, are privileged and shall not be included in the record or 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 is required by court order, statute or agency rule to be made public. (7-1-93)

503. -- 509. (RESERVED)

510. IDAPA 04.11.01.510 (RULE 510).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

511. IDAPA 04.11.01.511 (RULE 511).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

512. IDAPA 04.11.01.512 (RULE 512).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

513. IDAPA 04.11.01.513 (RULE 513).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).

Unless parties agree otherwise, facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences in a contested case are not part of the record. (7-1-93)

515. -- 519. (RESERVED)

**Discovery -- Related Prehearing Procedures
Rules 520 Through 549**

520. IDAPA 04.11.01.520 (RULE 520).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

No party before the agency is entitled to engage in discovery unless that party moves for an order to conduct discovery and the presiding officer issues an order approving the scope and type of discovery sought (discovery order), or upon agreement of all parties to the discovery that discovery of particular type and scope may be conducted. The presiding officer shall provide a schedule for discovery in the discovery order, but the order need not conform to the timetables of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to conduct discovery. The discovery order 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. (7-1-93)

522. IDAPA 04.11.01.522 (RULE 522).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

523. IDAPA 04.11.01.523 (RULE 523).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

524. IDAPA 04.11.01.524 (RULE 524).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

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

526. IDAPA 04.11.01.526 (RULE 526).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 527).

Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the discovery order. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. (7-1-93)

528. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 528).

Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 527, and objections to discovery must be filed and served as provided in the discovery order. (7-1-93)

529. EXHIBIT NUMBERS (RULE 529).

The presiding officer assigns exhibit numbers to each party. (7-1-93)

530. IDAPA 04.11.01.530 (RULE 530).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).

The presiding officer may impose all sanctions recognized by statute or rule for failure to comply with the discovery order. (7-1-93)

532. PROTECTIVE ORDERS (RULE 532).

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

533. -- 549. (RESERVED)

Hearings -- Miscellaneous Procedure
Rules 550 Through 599

550. NOTICE OF HEARING (RULE 550).

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the presiding officer finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 551. 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 officer(s) who will hear the case, the name, address and telephone number of the person to whom inquiries about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. 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)

551. FACILITIES AT OR FOR HEARING AND ADA REQUIREMENTS (RULE 551).

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the American with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act (e.g., sign language interpreters, Braille copies of documents) in order to participate in or understand the hearing, the agency will supply that assistance provided the person requiring such assistance has made such a request not later than five (5) working days before the hearing or such other time as specified in the notice. (7-1-93)

552. HOW HEARINGS HELD (RULE 552).

Hearings may be held in person or by telephone or television or other electronic means, so long as the parties or other authorized participants in the hearing have an opportunity to participate in the entire proceeding while it is taking

- place. (7-1-93)
- 553. IDAPA 04.11.01.553 (RULE 553).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 554. IDAPA 04.11.01.554 (RULE 554).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 555. IDAPA 04.11.01.555 (RULE 555).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 556. CONSOLIDATION OF PROCEEDINGS (RULE 556).**
The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. (7-1-93)
- 557. STIPULATIONS (RULE 557).**
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 presiding officer may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The presiding officer is not bound to adopt a stipulation of the parties, but may do so. If the presiding officer rejects a stipulation, the officer will do so before issuing a final order and will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (7-1-93)
- 558. IDAPA 04.11.01.558 (RULE 558).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 559. IDAPA 04.11.01.559 (RULE 559).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 560. IDAPA 04.11.01.560 (RULE 560).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 561. IDAPA 04.11.01.561 (RULE 561).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 562. IDAPA 04.11.01.562 (RULE 562).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 563. IDAPA 04.11.01.563 (RULE 563).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 564. IDAPA 04.11.01.564 (RULE 564).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 565. -- 599. (RESERVED)**

Evidence in Contested Cases
Rules 600 Through 609

- 600. IDAPA 04.11.01.600 (RULE 600).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 601. IDAPA 04.11.01.601 (RULE 601).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

602. IDAPA 04.11.01.602 (RULE 602).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

603. IDAPA 04.11.01.603 (RULE 603).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

604. IDAPA 04.11.01.604 (RULE 604).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

605. IDAPA 04.11.01.605 (RULE 605).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

606. EXHIBITS (RULE 606).
Exhibit numbers may be assigned to the parties before the hearing. Exhibits prepared for hearing must 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 paper or in such other form as is customarily used. 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. Exhibits offered at hearings are subject to appropriate and timely objections before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without prior approval of the presiding officer. (7-1-93)

607. -- 610. (RESERVED)

**Settlements
Rules 611 Through 649**

611. IDAPA 04.11.01.611 (RULE 611).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

612. IDAPA 04.11.01.612 (RULE 612).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

613. IDAPA 04.11.01.613 (RULE 613).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

614. IDAPA 04.11.01.614 (RULE 614).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

615. -- 649. (RESERVED)

**Records for Decisions
Rules 650 Through 699**

650. RECORD FOR DECISION (RULE 650).

01. Official Record. 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, complaints, motions, and answers filed in the proceeding; (7-1-93)

- c. All intermediate or interlocutory rulings; (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 offers of proof, however made; (7-1-93)
 - 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; (7-1-93)
 - g. All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)
 - h. All staff memoranda or data submitted in connection with the consideration of the proceeding; (7-1-93)
 - i. A statement of matters officially noticed; and (7-1-93)
 - j. All recommended orders, preliminary orders, final orders, and orders on reconsideration. (7-1-93)
- 651. IDAPA 04.11.01.651 (RULE 651).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 652. -- 699. (RESERVED)**

**Agency Orders and Review of Agency Orders
Rules 700 Through 799
Defaults
Rules 700 Through 799**

- 700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR (RULE 700).**
If a party fails to appear at the time and place set for hearing, the presiding officer may serve upon all parties a notice of a proposed default order denying or dismissing the matter set for hearing. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the party to appear at the time and place set for hearing. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (7-1-93)
- 701. IDAPA 04.11.01.701 (RULE 701).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 702. IDAPA 04.11.01.702 (RULE 702).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 703. -- 709. (RESERVED)**

**Interlocutory, Recommended, and
Final Orders -- Review or Stay of Orders
Rules 710 Through 789**

- 710. IDAPA 04.11.01.710 (RULE 710).**
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)
- 711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).**
Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (7-1-93)

712. -- 719. (RESERVED)

720. IDAPA 04.11.01.720 (RULE 720).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

721. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Final Order - Definition. Final orders are orders that have been confirmed or issued by the Board pursuant to Section 59-1314(4), Idaho Code. (7-1-93)

02. Content. Every final order 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; (7-1-93)

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

iv. The real property or personal property that was the subject of the agency action is attached. (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)

741. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).

If an order does not designate itself as recommended or final at its release, but is designated as recommended or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as recommended or final according to the terms of these rules should be designated as recommended or final, the party may move to designate the order as recommended or final, as appropriate. (7-1-93)

751. -- 759. (RESERVED)

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).

A hearing officer issuing a recommended order may modify the order on the hearing officer's own motion within fourteen (14) days after issuance of the order by withdrawing the recommended order and issuing a substitute 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)

761. -- 769. (RESERVED)

770. CLARIFICATION OF ORDERS (RULE 770).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, 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)

771. -- 779. (RESERVED)

780. IDAPA 04.11.01.780 (RULE 780).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

781. -- 789. (RESERVED)

Appeal to District Court
Rules 790 Through 799

790. PERSONS WHO MAY APPEAL (RULE 790).

Pursuant to Section 59-1314 and 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)

791. IDAPA 04.11.01.791 (RULE 791).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

792. -- 799. (RESERVED)

Subchapter C -- Rulemaking
Introduction
Rules 800 Through 809
Rulemaking
Rules 800 Through 860

800. IDAPA 04.11.01.800 (RULE 800).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

801. -- 809. (RESERVED)

Informal, Negotiated Rulemaking
Rules 810 through 819

810. IDAPA 04.11.01.810 (RULE 810).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

811. PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN (RULE 811).

If the agency determines that informal, negotiated rulemaking is feasible, it may publish in the Idaho Administrative Bulletin a notice of intent to promulgate a rule. If the agency determines that informal, negotiated rulemaking is not feasible, it may explain in its notice of intent to promulgate rules why informal rulemaking is not feasible and may proceed to formal rulemaking as provided in this chapter. Reasons why the agency may find that informal, negotiated rulemaking is not feasible include, but are not limited to, the need for temporary rulemaking, the simple nature of the proposed rule change, the lack of identifiable representative of affected interests, or determination that affected interests are not likely to reach a consensus on a proposed rule. The determination of the agency whether to use

informal, negotiated rulemaking is not reviewable. (7-1-93)

812. IDAPA 04.11.01.812 (RULE 812).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

813. PUBLIC MEETINGS (RULE 813).
The agency may convene public meetings of interested persons to consider the matter proposed by the agency and to attempt to reach a consensus concerning a proposed rule with respect to the matter and any other matter the parties determine is relevant to the proposed rule. Person(s) representing the agency may participate in the deliberations. (7-1-93)

814. IDAPA 04.11.01.814 (RULE 814).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

815. IDAPA 04.11.01.815 (RULE 815).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

816. -- 819. (RESERVED)

**Petitions to Initiate Rulemaking
Rules 820 Through 829**

820. IDAPA 04.11.01.820 (RULE 820).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

821. AGENCY RESPONSE TO PETITION (RULE 821).

01. Action of Agency. Within twenty-eight (28) days after the agency has received a petition to initiate rulemaking, the agency shall initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial. (7-1-93)

02. Denial. If the petition is denied, the written denial shall state: (7-1-93)

a. The agency has denied your petition to initiate rulemaking. This denial is a final agency action within the meaning of Section 67-5230, Idaho Code. (7-1-93)

b. Pursuant to Section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rulemaking by filing a petition in the District Court of the county which: (7-1-93)

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

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

iii. The party seeking review resides; or (7-1-93)

iv. The real property or personal property that was the subject of the denial of the petition for rulemaking is attached. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rulemaking. See Section 67-5273, Idaho Code. (7-1-93)

822. IDAPA 04.11.01.822 (RULE 822).
Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

823. -- 829. (RESERVED)

Procedure on Rulemaking for Final Rules
Rules 830 Through 839

830. REQUIREMENTS FOR NOTICE OF PROPOSED RULEMAKING (RULE 830).

- 01. Content of Notice.** Every notice of proposed rulemaking shall include: (7-1-93)
- a.** A statement of the legal authority for the proposed rules; (7-1-93)
 - b.** A statement in nontechnical terms of the substance of the proposed rules; (7-1-93)
 - c.** A statement whether the agency intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation. (7-1-93)
 - d.** The address to which written submissions concerning the proposed rules must be mailed. (7-1-93)
 - e.** The name and telephone number of the agency contact to whom questions about the proposed rules may be referred. (7-1-93)
 - f.** The deadline for written comment on the proposed rules and for asking for an oral presentation concerning the proposed rules. (7-1-93)
- 02. Availability of Information.** This information will be published in the Idaho Administrative Bulletin and be available directly from the agency. The notice of proposed rulemaking must be accompanied by a document showing the text of the proposed rule in legislative format. (7-1-93)

831. INFORMAL PHASES OF FORMAL RULEMAKING (RULE 831).

In addition to the formal phases of rulemaking proceedings, the agency may schedule meetings or other informal negotiations after the formal proposal of rules to explain the operation of the rules proposed. (7-1-93)

832. IDAPA 04.11.01.832 (RULE 832).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02. (7-1-93)

833. PETITIONS FOR ORAL PRESENTATION (RULE 833).

- 01. Requirement.** Any person petitioning for an opportunity for an oral presentation in a substantive rulemaking must substantially comply with this rule. (7-1-93)
- 02. Content of Petition.** The petition shall: (7-1-93)
- a.** Identify the petitioner and state the petitioner's interests in the matter; (7-1-93)
 - b.** Describe the nature of the opposition to or support of the rule or amendment to the rule proposed to be promulgated by the agency; and (7-1-93)
 - c.** Indicate alternative proposals of the petitioner and any statute, order, rule or other controlling law or factual allegations upon which the petitioner relies to support the request for the opportunity to provide an oral presentation. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)
- 03. Oral Presentation.** Within fourteen (14) days after receiving a petition for an oral presentation, the agency shall schedule the oral presentation or deny it. The agency shall provide an opportunity for oral presentation if request by twenty-five (25) persons, a political subdivision, or another agency, but no oral presentation need be provided when the agency has no discretion as to the substantive content of a proposed rule because the proposed rule is intended solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule. (7-1-93)

834. IDAPA 04.11.01.834 (RULE 834).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02.

(7-1-93)

835. ADOPTION OF FINAL RULES FOLLOWING COMMENT OR ORAL PRESENTATION (RULE 835).

After the expiration of the comment period for rulemaking and following any oral presentation on the rulemaking, the agency shall consider fully all issues presented by the written and oral submissions regarding the rules before adopting a final rule. The agency's adoption of a final rule shall contain a concise explanation of the rule, reasons for adopting the final rule and a statement of any change between the text of the proposed rule and the text of the final rule with an explanation of the reasons for any change.

(7-1-93)

836. -- 839. (RESERVED)

**Miscellaneous Provisions
Rules 840 Through 860**

840. IDAPA 04.11.01.840 (RULE 840).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02.

(7-1-93)

841. -- 849. (RESERVED)

850. IDAPA 04.11.01.850 (RULE 850).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02.

(7-1-93)

851. -- 859. (RESERVED)

860. IDAPA 04.11.01.860 (RULE 860).

Adopted through incorporation by reference pursuant to PERSI RAP Rule 001.02.

(7-1-93)

861. -- 999. (RESERVED)

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