

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

Administrative

58.01.23 – Contested Case Rules and Rules for Protection and Disclosure of Records

To whom does this rule apply?

This rule applies to any citizen of the state of Idaho and/or regulated industry appealing actions, other than IPDES permit decisions, of the Department of Environmental Quality to the Idaho Board of Environmental Quality or having a direct and substantial interest in a proceeding filed with the Board.

What is the purpose of this rule?

This rule establishes general standards for contested case proceedings, petitions for rulemaking, and declaratory ruling proceedings as required by law.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

Health and Safety -

Environmental Quality:

- [Section 39-105, Idaho Code](#) – Powers and Duties of the Director
- [Section 39-107, Idaho Code](#) – Board-Composition – Officers – Compensation – Powers – Subpoena – Depositions – Review - Rules

State Government and State Affairs -

Idaho Administrative Procedure Act

- [Section 67-5206, Idaho Code](#) – Promulgation of Rules Implementing Administrative Procedure Act
- [Section 74-114, Idaho Code](#) – Access to Air Quality, Water Quality and Hazardous Waste Records – Protection of Trade Secrets

Who do I contact for more information on this rule?

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58.01.23 – CONTESTED CASE RULES AND RULES FOR PROTECTION AND DISCLOSURE OF RECORDS

000. LEGAL AUTHORITY.

Sections 39-105, 39-107, and 74-114(8), Idaho Code.

(7-1-24)T

001. SCOPE AND APPLICABILITY.

01. Scope. These rules establish general standards for contested case proceedings and procedures to safeguard trade secrets. (3-31-22)

02. Applicability. Any person aggrieved by an action or inaction of the Department may file a petition to initiate a contested case pursuant to [Chapter 52, Title 67, Idaho Code](#). These rules govern and outline substantive, non-procedural requirements prior to and during any contested case proceeding, except that Idaho Pollutant Discharge Elimination System permit decisions are governed by [IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program,”](#) Section 204. (7-1-24)T

002. INFORMATION FOR FILING PETITION TO INITIATE CONTESTED CASE.

Hearing coordinator contact and information for filing a petition to initiate a contested case is available at: <http://deq.idaho.gov/public-information/laws-guidance-and-orders/petitions-for-review-and-precedential-orders/>.

(7-1-24)T

003. IDAHO RULES OF ADMINISTRATIVE PROCEDURE.

For purposes of contested case procedures, other than specifically provided for in these rules, refer to [IDAPA 62.01.01, Idaho Rules of Administrative Procedure](#). (7-1-24)T

004. (RESERVED)

005. DEFINITIONS.

The terms “board,” “department,” and “director” have the meaning provided for those terms in [Section 39-103, Idaho Code](#). The terms “contested case,” “order,” “party,” and “person” have the meaning provided for those terms in [Section 67-5201, Idaho Code](#). (3-31-22)

01. Aggrieved Person or Person Aggrieved. Any person or entity with legal standing to challenge an action or inaction of the Department, including but not limited to permit holders and applicants for permits challenging Department permitting actions. (3-31-22)

02. Petition. The pleading initiating a contested case. (3-31-22)

006. -- 041. (RESERVED)

042. PUBLIC NOTICE OF PETITION.

Within fourteen (14) days of the date a petition is filed with the Board, the Board will give reasonable notice to the public. The methods for giving notice will include, at a minimum, the following: (3-31-22)

01. Publication. Publish a one-time legal notice in the newspaper of general circulation in the county in which the petitioner resides or in which the facility or other subject of the petition is located and post the petition on the agency’s website at <http://deq.idaho.gov/public-information/laws-guidance-and-orders/petitions-for-review-and-precedential-orders/>. The legal notice will describe the nature of the action initiated by the filing of the petition and will include the date the petition was filed and a method by which interested persons may obtain a copy of the petition; and (7-1-24)T

02. Mail. Deliver via email, or First Class U.S. mail if email address is not available, a copy of the legal notice prepared in accordance with Subsection 042.01 of these rules to persons on any mailing list developed by the Department relating to the subject matter of the petition. (3-31-22)

0043. -- 059. (RESERVED)

060. TIME PERIOD FOR FILING PETITION.

Unless provided in Idaho Code or a rule administered by the Department, the petition must be filed thirty-five (35) days from the date of the action or inaction of the Department. (3-31-22)

061. STAY OF DEPARTMENT ACTIONS.

An action or inaction of the Department, or any portion thereof, which is the subject of a proceeding governed by these rules, is not stayed unless, upon a motion filed by a party, it is so ordered by the presiding officer upon appropriate terms. This section does not apply to Department action governed by Section 67-5254(1), Idaho Code. (3-31-22)

062. -- 159. (RESERVED)

160. PETITION.

The petition must:

- 01. Contents.** (3-31-22)
 - a.** Fully state the facts upon which it is based, including the specific alleged action or inaction of the Department; (3-31-22)
 - b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which it is based. Legal assertions will be accompanied by citations of cases and statutory provisions; (3-31-22)
 - c.** State the relief sought; and (3-31-22)
 - d.** State the basis for the petitioner's legal standing to initiate the contested case; and (3-31-22)
- 02. Filing.** Be filed in accordance with Section 002 of these rules. (3-31-22)

161. -- 351. (RESERVED)

352. PETITIONS TO INTERVENE - PROCEEDINGS INVOLVING A PERMIT.

A permit applicant or permit holder may intervene as a matter of right in any contested case in which the permit is contested. Petitions to intervene by the permit applicant or permit holder must be filed within twenty-one (21) days after service of the initiating petition upon the permit applicant or permit holder. (7-1-24)T

353. -- 899. (RESERVED)

900. RULES FOR PROTECTION AND DISCLOSURE OF RECORDS IN THE POSSESSION OF THE DEPARTMENT.

The purpose of Section 900 is to provide measures to safeguard trade secrets as required under [Section 74-114\(8\), Idaho Code](#). (3-31-22)

- 01. Safeguarding of Trade Secret Information.** (3-31-22)
 - a.** No Department officer or employee may disclose any information subject to a trade secret claim except as specifically mandated by statute. (3-31-22)
 - b.** Access to information subject to a trade secret claim by Department employees, contractors, or other representatives will be limited to access necessary to carry out duties on behalf of the Department. (3-31-22)
 - c.** Any information subject to a trade secret claim and received by the Department will be placed in a clearly marked, confidential section of the file. (3-31-22)
 - d.** The Department will train all new employees, and periodically train existing employees, in the proper filing, tracking and physical handling of records subject to a trade secret claim, and in the procedures established by these rules, Section 74-114, Idaho Code, and any relevant policies adopted by the Department. Training will be as frequent and extensive as deemed necessary by the Director. (3-31-22)
- 02. Notice of a Continuing Claim.** Release of information pursuant to Section 74-114(4), Idaho Code, will include a notice of a continuing claim. The Department will: (3-31-22)

a. Give notice of a continuing trade secret claim by noting its existence in a cover letter, or by other effective means if a cover letter is impractical, at the time the record is disclosed; (3-31-22)

b. Notify the person receiving the information, subject to a continuing trade secret claim, that the Department's disclosure does not waive the claim nor authorize any further disclosure by the person receiving the record; and (3-31-22)

c. Disclose a record under Section 74-114(4), Idaho Code, only if the person receiving the record agrees in writing to exercise all means legally available to protect the relevant record or portion of the record from further disclosure. (3-31-22)

901. -- 999. (RESERVED)