IDAPA 04 – IDAHO OFFICE OF THE ATTORNEY GENERAL

04.11.01 – Idaho Rules of Administrative Procedure of the Attorney General

Who does this rule apply to?
Unless a state agency by rule affirmatively declines to adopt this chapter in whole or in part, these rules apply to every state agency that conducts rulemaking or hears contested cases and to those members of the general public involved in agency rulemaking or a contested case proceeding.

What is the purpose of this rule?
The purpose of these rules is to establish rules of procedure for agency rulemaking and contested cases for those state agencies that have not by rule affirmatively declined to adopt this chapter in whole or in part.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

- Section 67-5201, et seq., Idaho Code – Administrative Procedure Act

Who do I contact for more information on this rule?

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Table of Contents

04.11.01 – Idaho Rules of Administrative Procedure of the Attorney General

SUBCHAPTER A – GENERAL PROVISIONS

000. Legal Authority (Rule 0). 7
001. Title And Scope (Rule 1). 7
002. Written Interpretations -- Agency Guidelines (Rule 2). 7
003. Administrative Appeal (Rule 3). 7
004. Public Records Act Compliance (Rule 4). 7
005. Definitions (Rule 5). 7
006. Filing Of Documents -- Number Of Copies (Rule 6). 9
007. -- 049. (Reserved) 9
050. Proceedings Governed (Rule 50). 9
051. Reference To Agency (Rule 51). 9
052. Liberal Construction (Rule 52). 9
053. Communications With Agency (Rule 53). 9
054. Identification Of Communications (Rule 54). 9
055. Service By Agency (Rule 55). 9
056. Computation Of Time (Rule 56). 10
057. Fees And Remittances (Rule 57). 10
058. -- 099. (Reserved) 10

SUBCHAPTER B – CONTESTED CASES

100. Informal Proceedings Defined (Rule 100). 10
101. Informal Procedure (Rule 101). 10
102. Further Proceedings (Rule 102). 11
103. Informal Proceedings Do Not Exhaust Administrative Remedies (Rule 103). 11
104. Formal Proceedings (Rule 104). 11
105. -- 149. (Reserved) 11
150. Parties To Contested Cases Listed (Rule 150). 11
151. Applicants/Claimants/Appellants (Rule 151). 11
152. Petitioners (Rule 152). 11
153. Complainants (Rule 153). 11
154. Respondents (Rule 154). 11
155. Protestants (Rule 155). 11
156. Intervenors (Rule 156). 11
157. Rights Of Parties And Of Agency Staff (Rule 157). 11
158. Persons Defined -- Persons Not Parties -- Interested Persons (Rule 158). 12
159. -- 199. (Reserved) 12
200. Initial Pleading By Party -- Listing Of Representatives (Rule 200). 12
201. Taking Of Appearances -- Participation By Agency Staff (Rule 201). 12
202. Representation Of Parties At Hearing (Rule 202). 12
203. Service On Representatives Of Parties And Other Persons (Rule 203). 13
204. Withdrawal Of Parties (Rule 204). 13
205. Substitution Of Representative -- Withdrawal Of Representative (Rule 205). 13

206. Conduct Required (Rule 206). 13
207. -- 209. (Reserved) 13
210. Pleadings Listed -- Miscellaneous (Rule 210). 13
211. -- 219. (Reserved) 13
220. Applications/Claims/Appeals -- Defined -- Form And Contents (Rule 220). ... 13
221. -- 229. (Reserved) 13
230. Petitions -- Defined -- Form And Contents (Rule 230). 13
231. -- 239. (Reserved) 14
240. Complaints -- Defined -- Form And Contents (Rule 240). 14
241. -- 249. (Reserved) 14
250. Protests -- Defined -- Form And Contents (Rule 250). 14
251. -- 259. (Reserved) 15
260. Motions -- Defined -- Form And Contents -- Time For Filing (Rule 260). 15
261. -- 269. (Reserved) 15
270. Answers -- Defined -- Form And Contents -- Time For Filing (Rule 270). 15
271. -- 279. (Reserved) 15
280. Consent Agreements -- Defined: Form And Contents (Rule 280). 15
281. -- 299. (Reserved) 16
300. Filing Documents With The Agency -- Number Of Copies -- Facsimile Transmission (Fax) (Rule 300). 16
301. Form Of Pleadings (Rule 301). 16
302. Service On Parties And Other Persons (Rule 302). 17
303. Proof Of Service (Rule 303). 17
304. Defective, Insufficient Or Late Pleadings (Rule 304). 17
305. Amendments To Pleadings -- Withdrawal Of Pleadings (Rule 305). 17
306. -- 349. (Reserved) 17
350. Order Granting Intervention Necessary (Rule 350). 17
351. Form And Contents Of Petitions To Intervene (Rule 351). 17
352. Timely Filing Of Petitions To Intervene (Rule 352). 18
353. Granting Petitions To Intervene (Rule 353). 18
354. Orders Granting Intervention -- Opposition (Rule 354). 18
355. Public Witnesses (Rule 355). 18
356. -- 399. (Reserved) 18
400. Form And Contents Of Petition For Declaratory Rulings (Rule 400). 18
401. Notice Of Petition For Declaratory Ruling (Rule 401). 18
402. Petitions For Declaratory Rulings To Be Decided By Order (Rule 402). 19
403. -- 409. (Reserved) 19
410. Appointment Of Hearing Officers (Rule 410). 19
411. Hearing Officers Contrasted With Agency Head (Rule 411). 19
412. Disqualification Of Officers Hearing Contested Cases (Rule 412). 19
413. Scope Of Authority Of Hearing Officers (Rule 413). 20
414. Presiding Officer(s) (Rule 414). 20
415. Challenges To Statutes (Rule 415). 20
416. Review Of Rules (Rule 416). 20

417. Ex Parte Communications (Rule 417). 20
418. -- 419. (Reserved) 21
420. Contrast Between Agency's Prosecutorial/Investigative And Adjudicatory Functions (Rule 420). 21
421. Public Inquiries About Or Recommendations For Agency Issuance Of A Complaint (Rule 421). 21
422. Consideration Of Consent Agreement Or Other Settlements Before Complaint Issued (Rule 422). 22
423. Procedures After Issuance Of A Complaint And Before The Agency Head's Consideration Of The Complaint (Rule 423). 22
424. Hearing Officers (Rule 424). 24
425. Agency Head's Consideration Of Recommended Or Preliminary Order (Rule 425). 24
426. -- 499. (Reserved) 25
500. Alternative Resolution Of Contested Cases (Rule 500). 25
501. Neutrals (Rule 501). 25
502. Confidentiality Rule 502). 25
503. -- 509. (Reserved) 26
510. Purposes Of Prehearing Conferences (Rule 510). 26
511. Notice Of Prehearing Conference (Rule 511). 26
512. Record Of Conference (Rule 512). 26
513. Orders Resulting From Prehearing Conference (Rule 513). 26
514. Facts Disclosed Not Part Of The Record (Rule 514). 26
515. -- 519. (Reserved) 26
520. Kinds And Scope Of Discovery Listed (Rule 520). 26
521. When Discovery Authorized (Rule 521). 27
522. Rights To Discovery Reciprocal (Rule 522). 27
523. Depositions (Rule 523). 27
524. Production Requests Or Written Interrogatories And Requests For Admission (Rule 524). 27
525. Subpoenas (Rule 525). 27
526. Statutory Inspection, Examination, Investigation, Etc. -- Contrasted With Other Discovery (Rule 526). 27
527. Answers To Production Requests Or Written Interrogatories And To Requests For Admission (Rule 527). 27
528. Filing And Service Of Discovery-Related Documents (Rule 528). 27
529. Exhibit Numbers (Rule 529). 28
530. Prepared Testimony And Exhibits (Rule 530). 28
531. Sanctions For Failure To Obey Order Compelling Discovery (Rule 531). 28
532. Protective Orders (Rule 532). 28
533. -- 549. (Reserved) 28
550. Notice Of Hearing (Rule 550). 28
551. Facilities At Or For Hearing And ADA Requirements (Rule 551). 28
552. How Hearings Held (Rule 552). 28
553. Conduct At Hearings (Rule 553). 28

554. Conference At Hearing (Rule 554). 28
555. Preliminary Procedure At Hearing (Rule 555). 29
556. Consolidation Of Proceedings (Rule 556). 29
557. Stipulations (Rule 557). 29
558. Order Of Procedure (Rule 558). 29
559. Testimony Under Oath (Rule 559). 29
560. Parties And Persons With Similar Interests (Rule 560). 29
561. Continuance Of Hearing (Rule 561). 29
562. Rulings At Hearings (Rule 562). 29
563. Oral Argument (Rule 563). 29
564. Briefs -- Memoranda -- Proposed Orders Of The Parties -- Statements Of Position -- Proposed Order Of The Presiding Officer (Rule 564). 29
565. Procedure On Prehearing Motions (Rule 565). 29
566. Joint Hearings (Rule 566). 30
567. -- 599. (Reserved) 30
600. Rules Of Evidence -- Evaluation Of Evidence (Rule 600). 30
601. Documentary Evidence (Rule 601). 30
602. Official Notice -- Agency Staff Memoranda (Rule 602). 30
603. Depositions (Rule 603). 30
604. Objections -- Offers Of Proof (Rule 604). 30
605. Prepared Testimony (Rule 605). 30
606. Exhibits (Rule 606). 30
607. -- 609. (Reserved) 31
610. Confidentiality Of Settlement Negotiations (Rule 610). 31
611. Suggestion For Or Inquiry About Settlements (Rule 611). 31
612. Consideration Of Settlements (Rule 612). 31
613. Burdens Of Proof (Rule 613). 31
614. Settlement Not Binding (Rule 614). 31
615. -- 649. (Reserved) 31
650. Record For Decision (Rule 650). 31
651. Recording Or Reporting Of Hearings (Rule 651). 32
652. -- 699. (Reserved) 32
700. Notice Of Proposed Default After Failure To Appear (Rule 700). 32
701. Seven Days To Challenge Proposed Default Order (Rule 701). 32
702. Issuance Of Default Order (Rule 702). 32
703. -- 709. (Reserved) 33
710. Interlocutory Orders (Rule 710). 33
711. Review Of Interlocutory Orders (Rule 711). 33
712. -- 719. (Reserved) 33
720. Recommended Orders (Rule 720). 33
721. -- 729. (Reserved) 34
730. Preliminary Orders (Rule 730). 34
731. -- 739. (Reserved) 34
740. Final Orders (Rule 740). 35

741. Orders Regarding Costs And/Or Fees (Rule 741). 35
742. -- 749. (Reserved) 36
750. Order Not Designated (Rule 750). 36
751. -- 759. (Reserved) 36
760. Modification Of Order On Presiding Officer's Own Motion (Rule 760). 36
761. -- 769. (Reserved) 37
770. Clarification Of Orders (Rule 770). 37
771. -- 779. (Reserved) 37
780. Stay Of Orders (Rule 780). 37
781. -- 789. (Reserved) 37
790. Persons Who May Appeal (Rule 790). 37
791. Notice Of Appeal (Rule 791). 37
792. -- 799. (Reserved) 37

SUBCHAPTER C – RULEMAKING

800. Formal And Informal Rulemaking (Rule 800). 38
801. -- 809. (Reserved) 38
810. Legislative Preference For Negotiated Rulemaking Procedures (Rule 810). . 38
811. Publication In Idaho Administrative Bulletin (Rule 811). 38
812. Contents Of Notice Of Intent To Promulgate Rules (Rule 812). 38
813. Public Meetings (Rule 813). 39
814. Reports To The Agency (Rule 814). 39
815. Agency Consideration Of Report (Rule 815). 39
816. -- 819. (Reserved) 39
820. Form And Contents Of Petition To Initiate Rulemaking (Rule 820). 39
821. Agency Response To Petition (Rule 821). 39
822. Notice Of Intent To Initiate Rulemaking Constitutes Action On Petition (Rule 822). 40
823. -- 829. (Reserved) 40
830. Requirements For Notice Of Proposed Rulemaking (Rule 830). 40
831. Informal Phases Of Formal Rulemaking (Rule 831). 42
832. Comments On Proposed Rules (Rule 832). 42
833. Petitions For Oral Presentation (Rule 833). 42
834. The Rulemaking Record (Rule 834). 42
835. Adoption And Publication Of Pending Rules Following Comment Or Oral Presentation (Rule 835). 43
836. Final Rules (Rule 836). 43
837. -- 839. (Reserved) 43
840. Procedure For Adoption Of Temporary Rules (Rule 840). 43
841. -- 849. (Reserved) 44
850. Correction Of Typographical, Transcription Or Clerical Errors In Pending Rules (Rule 850). 44
851. -- 859. (Reserved) 44
860. Persons Who May Seek Judicial Review (Rule 860). 44
861. -- 999. (Reserved) 44

SUBCHAPTER A – GENERAL PROVISIONS
(Rules 0 through 99)

000. LEGAL AUTHORITY (RULE 0).
This chapter is adopted under the legal authority of Sections 67-5206(2), 67-5206(3) and 67-5206(4), Idaho Code. (3-24-93)

001. TITLE AND SCOPE (RULE 1).

01. **Title**. This chapter is titled "Idaho Rules of Administrative Procedure of the Attorney General." (3-24-93)

02. **Scope**. Every state agency that conducts rulemaking or hears contested cases must adopt individual rules of procedure as required by this chapter. Further every state agency will be considered to have adopted the procedural rules of this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (3-24-93)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).
Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are available from the Office of the Attorney General, Statehouse, Boise, Idaho 83720. (3-24-93)

003. ADMINISTRATIVE APPEAL (RULE 3).
There is no provision for administrative appeals before the Attorney General under this chapter. This chapter governs administrative appeals before and within agencies that do not by rule opt out of some or all of this chapter. (3-24-93)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).
All rules required to be adopted by this chapter are public records. (3-24-93)

005. DEFINITIONS (RULE 5).
As used in this chapter: (3-24-93)

01. **Administrative Code**. The Idaho Administrative Code established in Chapter 52, Title 67, Idaho Code. (3-24-93)

02. **Agency**. Each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in Section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction. (3-24-93)

03. **Agency Action**. Agency action means: (3-24-93)

a. The whole or part of a rule or order; (3-24-93)

b. The failure to issue a rule or order; or (3-24-93)

c. An agency's performance of, or failure to perform, any duty placed on it by law. (3-24-93)

04. **Agency Head**. An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. (3-24-93)

05. **Bulletin**. The Idaho Administrative Bulletin established in Chapter 52, Title 67, Idaho Code. (3-24-93)

06. **Contested Case**. A proceeding which results in the issuance of an order. (3-24-93)

07. **Coordinator**. The administrative rules coordinator prescribed in Section 67-5202, Idaho Code. (3-24-93)

08. **Document**. Any proclamation, executive order, notice, rule or statement of policy of an agency.

(3-24-93)

09. **Final Rule**. A rule that has been adopted by an agency under the regular rulemaking process and that is in effect. (7-1-97)

10. **License**. The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. (3-24-93)

11. **Official Text**. The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and which is the only legally enforceable text of such document. (4-7-11)

12. **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. (3-24-93)

13. **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. (3-24-93)

14. **Pending Rule**. A rule that has been adopted by an agency under the regular rulemaking process (i.e., proposal of rule in Bulletin, opportunity for written comment or oral presentation, and adoption of rule in Bulletin) and remains subject to legislative review. (7-1-97)

15. **Person**. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (3-24-93)

16. **Provision of Law**. The whole or a part of the state or federal constitution, or of any state or federal: (3-24-93)

a. Statute; or (3-24-93)

b. Rule or decision of the court. (3-24-93)

17. **Proposed Rule**. A rule published in the bulletin as provided in Section 67-5221, Idaho Code. (7-1-97)

18. **Publish**. To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (3-24-93)

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: (3-24-93)

a. Law or policy, or (3-24-93)

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: (3-24-93)

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; (3-24-93)

ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (3-24-93)

iii. Intra-agency memoranda; or (3-24-93)

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. (3-24-93)

20. **Rulemaking**. The process for formulation, adoption, amendment or repeal of a rule. (3-24-93)

21. **Service or Serving**. The agency's or a party's delivery or distribution of official documents in a legally sufficient manner in a contested case proceeding to the parties to that proceeding and, if applicable, to any other persons required by statute, rule, order or notice to receive official documents. (4-7-11)

22. **Submitted for Review**. A rule that has been provided to the legislature for review at a regular or special legislative session as provided in Section 67-5291, Idaho Code. (7-1-97)

23. **Temporary Rule**. A rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in Section 67-5226, Idaho Code. (7-1-97)

006. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 6).
Each agency must individually adopt a rule of procedure that lists the officer or officers with whom all documents in rulemakings or contested cases must be filed. This rule may require all filings to be made with one (1) officer, for example the agency director or the agency secretary, or may generally provide that all documents in a given rulemaking or contested case will be filed with an officer designated for the specific rulemaking or contested case. The rule must state whether copies in addition to the original must be filed with the agency. (3-24-93)

007. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).
Rules 100 through 799 govern procedure before agencies in contested cases, unless otherwise provided by rule, notice or order of the agency. Rules 800 through 860 govern procedure before agencies in rulemaking, unless otherwise provided by rule or notice of the agency. Every state agency that hears contested cases (except the Industrial Commission and the Public Utilities Commission) must use the procedures for contested cases adopted in these rules unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. Every state agency that conducts rulemaking must use the procedures for rulemaking adopted in this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (3-24-93)

051. REFERENCE TO AGENCY (RULE 51).
Reference to the agency in these rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, or presiding officer, as context requires. Reference to the agency head means to the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. (3-24-93)

052. LIBERAL CONSTRUCTION (RULE 52).
The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited 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. (3-24-93)

053. COMMUNICATIONS WITH AGENCY (RULE 53).
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 or otherwise transmitted. (3-24-93)

054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).
Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (3-24-93)

055. SERVICE BY AGENCY (RULE 55).

01. Personal Service and Service by Mail. Unless otherwise provided by statute or these rules or the agency's rules, the officer designated by the agency to serve rules, notices, summonses, complaints, or orders issued by the agency may serve these documents by regular mail, or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. (4-7-11)

02. Electronic Service. If a party has appeared in a contested case or has not yet appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, and if authorized by statute, agency rule, notice or order, the officer designated to serve notices and orders in a contested case may serve those notices and orders by FAX or by e-mail in lieu of service by mail or personal service. (4-7-11)

03. When Service Complete. 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, or when there is an electronic verification that a facsimile transmission or an e-mail has been sent. (4-7-11)

04. Persons Served. The officer designated by the agency to serve documents in a proceeding 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. (4-7-11)

05. Proof of Service. Every notice and order that the agency serves in a contested case must be accompanied by a proof of service stating the service date, each party or other person who was served, and the method of service. The agency may use a proof of service similar to those used by parties. See Rule 303. (4-7-11)

056. COMPUTATION OF TIME (RULE 56).
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, but the last day of the period so computed is 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 a Saturday, Sunday or a legal holiday. (3-24-93)

057. FEES AND REMITTANCES (RULE 57).
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. (3-24-93)

058. -- 099. (RESERVED)

SUBCHAPTER B – CONTESTED CASES
Rules 100 through 800 – Contested Cases
Rules 101 through 400 – Definitions and General Provisions
Rules 101 through 150 – Informal and Formal Proceedings

100. INFORMAL PROCEEDINGS DEFINED (RULE 100).
Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 202, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case. (3-24-93)

101. INFORMAL PROCEDURE (RULE 101).
Statute authorizes and these rules encourage the use informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person. (3-24-93)

102. FURTHER PROCEEDINGS (RULE 102).
If statute provides that informal procedures shall be followed with no opportunity for further formal administrative review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Rule 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, at which time the parties may fully develop the record before the agency. (3-24-93)

103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 103).
Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceeding are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential and shall not be included in the agency record of a later formal proceeding. (3-24-93)

104. FORMAL PROCEEDINGS (RULE 104).
Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings. (3-24-93)

105. -- 149. (RESERVED)

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).
Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. (3-24-93)

151. APPLICANTS/CLAIMANTS/APPELLANTS (RULE 151).
Persons who seek any right, license, award or authority from the agency are called “applicants” or “claimants” or “appellants.” (3-24-93)

152. PETITIONERS (RULE 152).
Persons not applicants 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 (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” (3-24-93)

153. COMPLAINANTS (RULE 153).
Persons who charge other person(s) with any act or omission are called “complainants.” In any proceeding in which the agency itself charges a person with an act or omission, the agency is called “complainant.” (3-24-93)

154. RESPONDENTS (RULE 154).
Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” (3-24-93)

155. PROTESTANTS (RULE 155).
Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called “protestants.” (3-24-93)

156. INTERVENORS (RULE 156).
Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354 are called “intervenors.” (3-24-93)

157. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 157).

Subject to Rules 558, 560, and 600, 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. (3-24-93)

158. PERSONS DEFINED -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).
The term "person" includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in the administrative proceeding. Persons other than the persons named in Rules 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In kinds of proceedings in which persons other than the applicant or claimant or appellant, petitioner, complainant, or respondent would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called "Interested Persons." Interested persons may become protestants, intervenors or public witnesses. The agency must serve notice of such proceedings on all interested persons. (3-24-93)

159. -- 199. (RESERVED)

Rules 200 through 209
Representatives of Parties

200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).
The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, 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. Unless authorized by order of the agency, no more than two (2) representatives for service of documents may be listed in an initial pleading. 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 first person signing the pleading will be considered the party's representative. (3-24-93)

201. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF (RULE 201).
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 or preliminary 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 be available for cross-examination and participate in the hearing in the same manner as a party. (3-24-93)

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: (3-24-93)

a. Natural Person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, family member or next friend. (3-24-93)

b. A partnership may be represented by a partner, duly authorized employee, or attorney. (3-24-93)

c. A corporation may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

e. A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

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. (3-24-93)

203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 203).
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 designated pursuant to Rule 200, 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. (3-24-93)

204. WITHDRAWAL OF PARTIES (RULE 204).
Any party may withdraw from a proceeding in writing or at hearing. (3-24-93)

205. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 205).
A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. (3-24-93)

206. CONDUCT REQUIRED (RULE 206).
Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (3-24-93)

207. -- 209. (RESERVED)

Rules 210 through 299
Pleadings – In General

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).
Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. 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 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (3-24-93)

211. -- 219. (RESERVED)

220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).

01. Applications/Claims/Appeals Defined. All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." (3-24-93)

02. Form and Content. Applications or claims or appeals should: (3-24-93)

a. Fully state the facts upon which they are based; (3-24-93)

b. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based; and (3-24-93)

c. State the right, license, award, or authority sought. (3-24-93)

221. -- 229. (RESERVED)

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

01. **Petitions Defined**. All pleadings requesting the following are called "petitions." (3-24-93)

a. Modification, amendment or stay of existing orders or rules; (3-24-93)

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; (3-24-93)

c. The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; (3-24-93)

d. Reconsideration; or (3-24-93)

e. Intervention. (3-24-93)

02. **Form and Contents**. Petitions should: (3-24-93)

a. Fully state the facts upon which they are based; (3-24-93)

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; (3-24-93)

c. State the relief desired; and (3-24-93)

d. State the name of the person petitioned against (the respondent), if any. (3-24-93)

231. -- 239. (RESERVED)

240. COMPLAINTS -- DEFINED -- FORM AND CONTENTS (RULE 240).

01. **Complaints Defined**. All pleadings charging other person(s) with acts or omissions under law administered by the agency are called "complaints." (3-24-93)

02. **Form and Contents**. Complaints must: (3-24-93)

a. Be in writing; (3-24-93)

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; (3-24-93)

c. Refer to statutes, rules, orders or other controlling law involved; (3-24-93)

d. State the relief desired; (3-24-93)

e. State the name of the person complained against (the respondent). (3-24-93)

241. -- 249. (RESERVED)

250. PROTESTS -- DEFINED -- FORM AND CONTENTS (RULE 250).

01. **Protests Defined**. All pleadings opposing an application or claim or appeal as a matter of right are called "protests." (3-24-93)

02. **Form and Contents**. Protests should: (3-24-93)

a. Fully state the facts upon which they are based, including the protestant's claim of right to oppose the application or claim; (3-24-93)

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (3-24-93)

c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. (3-24-93)

251. -- 259. (RESERVED)

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

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." (3-24-93)

02. Form and Contents. Motions should: (3-24-93)

a. Fully state the facts upon they are based; (3-24-93)

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and (3-24-93)

c. State the relief sought. (3-24-93)

03. Oral Argument -- Time for Filing. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest 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 565. (3-24-93)

261. -- 269. (RESERVED)

270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).
All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, protests, or motions are called "answers." (3-24-93)

01. Answers to Pleadings Other Than Motions. Answers to applications, claims, or appeals, complaints, petitions, or protests 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, or a motion to dismiss is made within twenty-one (21) 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 700. Answers to applications or claims or appeals, complaints, petitions, or protests must admit or deny each material allegation of the application or claim or appeal, complaint, petition or protest. 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. (3-24-93)

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 565. (3-24-93)

271. -- 279. (RESERVED)

280. CONSENT AGREEMENTS -- DEFINED: FORM AND CONTENTS (RULE 280).

01. Consent Agreements Defined. 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 mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order,

case decision, or other provision of law, are called "consent agreements." Consent agreements are intended to require compliance with existing law. (3-24-93)

02. **Requirements**. Consent agreements must: (3-24-93)

a. Recite the parties to the agreement; and (3-24-93)

b. Fully state the conduct proscribed or prescribed by the consent agreement. (3-24-93)

03. **Additional**. In addition, consent agreements may: (3-24-93)

a. Recite the consequences of failure to abide by the consent agreement; (3-24-93)

b. Provide for payment of civil or administrative penalties authorized by law; (3-24-93)

c. Provide for loss of rights, licenses, awards or authority; (3-24-93)

d. Provide for other consequences as agreed to by the parties; and (3-24-93)

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (3-24-93)

281. -- 299. (RESERVED)

300. FILING DOCUMENTS WITH THE AGENCY -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) (RULE 300).

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed 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) if the agency's individual rule of practice lists a FAX number for that agency. Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (3-24-93)

301. FORM OF PLEADINGS (RULE 301).

01. **Form**. All pleadings, except those filed on agency forms, submitted by a party and intended to be part of an agency record must: (3-24-93)

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; (3-24-93)

b. State the case caption, case number and title of the document; (3-24-93)

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 (3-24-93)

d. Have at least one inch (1") left and top margins. (3-24-93)

02. **Example**. 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 AGENCY

(Title of Proceeding) CASE NO.

(TITLE OF DOCUMENT)

(3-24-93)

302. SERVICE ON PARTIES AND OTHER PERSONS (RULE 302).
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 the original filing with the officer designated by the agency to receive filings in the 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. (3-24-93)

303. PROOF OF SERVICE (RULE 303).
Every document that a party or interested persons files with and intends 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 and addresses)).
(by facsimile transmission to: (list names and FAX numbers))
(by e-mail to: (list names and e-mail addresses)).

(Signature)

(4-7-11)

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).
Defective, insufficient or late pleadings may be returned or dismissed. (3-24-93)

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 will 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. (3-24-93)

306. -- 349. (RESERVED)

Rules 350 through 399
Intervention – Public Witnesses

350. ORDER GRANTING INTERVENTION NECESSARY (RULE 350).
Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. (3-24-93)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).
Petitions to intervene must comply with Rules 200, 300, and 301. 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. (3-24-93)

352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).
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. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (3-24-93)

353. GRANTING PETITIONS TO INTERVENE (RULE 353).
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. (3-24-93)

354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).
No order granting a petition to intervene will be acted upon fewer than seven (7) days after its filing, except in a hearing in which any party may be heard. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene. (3-24-93)

355. PUBLIC WITNESSES (RULE 355).
Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 558 and 560, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analyses or detailed exhibits must comply with Rule 530 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. (3-24-93)

356. -- 399. (RESERVED)

Rules 400 through 499
Declaratory Rulings and Orders – Hearing Officers – Presiding Officers

Rules 400 through 409
Declaratory Rulings

400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS (RULE 400).
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. (3-24-93)

01. Form. The petition shall: (3-24-93)

a. Identify the petitioner and state the petitioner's interest in the matter; (3-24-93)

b. State the declaratory ruling that the petitioner seeks; and (3-24-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (3-24-93)

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

401. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 401).
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. (3-24-93)

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (RULE 402).

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. (3-24-93)

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: (3-24-93)

a. This is a final agency action issuing a declaratory ruling. (3-24-93)

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: (3-24-93)

i. A hearing was held; (3-24-93)

ii. The declaratory ruling was issued; (3-24-93)

iii. The party appealing resides, or operates its principal place of business in Idaho; or (7-1-97)

iv. The real property or personal property that was the subject of the declaratory ruling is located. (3-24-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. (3-24-93)

403. -- 409. (RESERVED)

Rules 410 through 499
Hearing Officers – Presiding Officers

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).
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. The appointment of a hearing officer is a public record available for inspection, examination and copying. (3-24-93)

411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD (RULE 411).
Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head. (3-24-93)

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).
Pursuant to Section 67-5252, Idaho Code, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a presiding officer and any party shall have a right to move to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency hearing the contested case, 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, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or promptly 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, without awaiting the designation by a presiding officer. A hearing 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. Disqualification of agency heads, if allowed, will be pursuant to Sections 59-704 and 67-5252(4), Idaho Code. (3-24-93)

413. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 413).
The scope of hearing officers' authority may be restricted in the appointment by the agency. (3-24-93)

01. Scope of Authority. Unless the agency otherwise provides hearing, officers have the standard scope of authority, which is: (3-24-93)

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; (3-24-93)

b. 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; (3-24-93)

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 (3-24-93)

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 or preliminary orders by the hearing officer. (3-24-93)

02. Limitation. The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer's authority could be limited to scope Rule 413.01.c. (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers may be given authority with regard to the agency's rules as provided in Rule 416. (3-24-93)

414. PRESIDING OFFICER(S) (RULE 414).
One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. 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. (3-24-93)

415. CHALLENGES TO STATUTES (RULE 415).
A hearing 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 has preempted a state statute or rule, and the hearing officer 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 hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. (3-24-93)

416. REVIEW OF RULES (RULE 416).
When an order is issued by the agency head in a contested case, the order may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. (3-24-93)

417. EX PARTE COMMUNICATIONS (RULE 417).
Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, 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). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, when a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of

record. Written communications from a party showing service upon all other parties are not ex parte communications. (3-24-93)

418. -- 419. (RESERVED)

420. CONTRAST BETWEEN AGENCY'S PROSECUTORIAL/INVESTIGATIVE AND ADJUDICATORY FUNCTIONS (RULE 420).
When statute assigns to an agency both (1) the authority to initiate complaints or to investigate complaints made by the public, and (2) the authority to decide the merits of complaints, the agency is required to perform two distinct functions: prosecutorial/investigative and adjudicatory. In light of these dual functions, Rules 420 through 429 set forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers in processing these complaints or responding to citizen inquiries. As used in Rules 420 through 429, the term agency head means the officer or officers who exercise the agency's ultimate adjudicatory authority and includes individual members of a multimember board or commission comprising the agency head when a multimember board of commission exercises ultimate adjudicatory authority. These rules do not apply to elected constitutional officers in the exercise of their constitutional duties, either individually or in constitutional boards or commissions. (1-1-95)

01. Prosecutorial/Investigative Function. The prosecutorial/investigative function (including issuing a complaint) can be performed exclusively by agency attorneys and agency staff. When required or allowed by statute, the agency head may participate in or supervise investigations preceding the issuance of a complaint and may supervise the agency attorneys and agency staff conducting the prosecution of the complaint issued by the agency head, but the agency head (or members of the agency head) shall not participate in the prosecution of a formal contested case hearing for a complaint issued by the agency unless the agency head or that member does not participate in the adjudicatory function. The investigative function includes gathering of evidence outside of formal contested case proceedings. The prosecutorial function includes presentation of allegations or evidence to the agency head for determination whether a complaint will be issued, the issuance of a complaint when complaints are issued without the involvement of an agency adjudicator, and presentation of evidence or argument and briefing on the record in a formal contested case proceeding. (1-1-95)

02. Adjudicatory Function. The adjudicatory function is performed by the agency head or the agency head's designee and/or hearing officers. The adjudicatory function includes: deciding whether to issue a complaint upon the basis of allegations before the agency when the decision to issue the complaint is made by an agency head acting in an adjudicatory capacity, i.e., when presented by agency staff in a formal setting with the question whether a complaint shall be issued; deciding whether to accept a consent order or other settlement of a complaint when the decision to accept a consent order or other settlement is made by an agency head acting in an adjudicatory capacity; and deciding the merits of a complaint following presentation of evidence in formal contested case proceedings. The adjudicatory function also includes agency attorneys' advice to the agency head or hearing officer in the performance of any adjudicatory functions. (1-1-95)

421. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR AGENCY ISSUANCE OF A COMPLAINT (RULE 421).
This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers upon receipt of a public inquiry whether, or public recommendation that, the agency issue a complaint. (1-1-95)

01. The Agency Head. When the public contacts the agency head to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the agency head may: explain the agency's procedures; explain the agency's jurisdiction or authority (including the statutes or rules administered by the agency); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency. When the agency head issues complaints, the agency head may discuss whether given allegations would, in the agency head's opinion, warrant the issuance of a complaint or warrant direction to staff to pursue further investigation. No statement of the agency head in response to a public inquiry constitutes a finding of fact or other decision on the underlying matter. (1-1-95)

02. The Agency Attorney. When the public contacts an agency attorney to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the agency attorney may: explain the agency's procedures; explain the agency's jurisdiction or authority (including an explanation of the statutes or rules administered by the agency); and direct the public to appropriate staff personnel who can provide

investigatory assistance or who can advise them how to pursue a complaint before the agency. An agency attorney assigned to a prosecutorial/investigative role may discuss whether given allegations would, in the attorney's opinion, warrant the issuance of a complaint or warrant direction to staff to pursue further investigation. The agency is not bound by the attorney's advice or recommendations, and the attorney should notify the public that the agency is not obligated to follow the attorney's advice or recommendations. (1-1-95)

03. The Agency Staff. When the public contacts the agency staff to inquire whether a complaint should be issued or to recommend that a complaint be issued, a member of the agency staff authorized to respond to public inquiries about complaints may: explain the agency's procedures; explain the agency's jurisdiction or authority (including an explanation of the statutes or rules administered by the agency); direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency; and express an opinion whether given allegations would, in the agency staff's opinion, warrant the issuance of a complaint or warrant agency staff's further investigation. The agency is not bound by the agency staff's advice or recommendations, and the agency staff should notify the public that the agency is not obligated to follow the agency staff's advice or recommendations. (1-1-95)

04. Hearing Officers. When the public contacts a hearing officer to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the hearing officer should not discuss the matter, but should refer the member of the public to other agency personnel. (1-1-95)

422. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS BEFORE COMPLAINT ISSUED (RULE 422).

This rule sets forth procedures to be followed when a consent agreement, stipulated settlement, or other settlement is negotiated before a complaint is filed. (1-1-95)

01. Negotiations. As authorized by the agency, an attorney assigned to a prosecutorial/investigative role or members of the agency staff may negotiate consent agreements or other settlements with any person who might later be the subject of a complaint. When the agency head issues complaints, the agency head may participate in the negotiations. Otherwise, no member of the agency head, no attorney assigned to advise or assist the agency head in its adjudicatory function, and no hearing officer may participate in these negotiations, but the agency head may have rules or guidelines for issuance of consent agreements or other general policy statements available to guide individual negotiations. (1-1-95)

02. Presentation of Consent Agreement to Agency Head. When the consent agreement provides, or the persons signing the consent agreement contemplate, that the consent agreement must be presented to the agency head for approval, the consent agreement may be presented to the agency head by representatives of any party, unless the agreement provides to the contrary. Any consent agreement presented to the agency head must be served on all parties and on the agency staff. (1-1-95)

03. Agency Head Consideration of Consent Agreement. A consent agreement that is presented to the agency head for approval, disapproval or modification must be reviewed under this rule. The agency head may accept or reject the consent agreement, indicate how the consent agreement must be modified to be acceptable, or inform the parties what further information is required for the agency head's consideration of the consent agreement. When a consent agreement is rejected, no matter recited in the rejected consent agreement may be used as an admission against a party in any later proceeding before the agency, and any such matter must be proven by evidence independent of the consent agreement. (1-1-95)

423. PROCEDURES AFTER ISSUANCE OF A COMPLAINT AND BEFORE THE AGENCY HEAD'S CONSIDERATION OF THE COMPLAINT (RULE 423).

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers after a complaint is issued, while investigation or discovery is underway, while a hearing is conducted, and before the recommended order or preliminary order of the hearing officer is submitted to the agency head (if a hearing officer hears the complaint and issues a recommended or preliminary order). (1-1-95)

01. The Agency Head. (1-1-95)

a. Prohibited Contacts--allowable Managerial Reporting. Unless authorized or required by statute, the

agency head shall not discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. The agency head may request periodic progress reporting on staff preparation from an executive director or other staff member in charge. For example, the agency head may ask whether the agency 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. (1-1-95)

b. Allowed Contacts. The agency head may discuss the substance of the complaint with agency attorneys and agency staff who are not involved in the prosecution or investigation of the complaint. When one or more members of the agency head sits with a hearing officer to hear the contested case, any member of the agency head not participating in the prosecution and not supervising prosecutorial/investigative personnel may discuss the substance of the complaint with the hearing officer. (1-1-95)

02. The Agency Attorney. (1-1-95)

a. Prosecutorial/Investigative Attorneys. Except as authorized by Subsection 423.01.a. of this rule, no agency attorney involved in the investigation or prosecution of a complaint shall discuss the substance of the complaint ex parte with the agency head, a hearing officer assigned to hear the complaint, or with any agency attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint; provided, that when a hearing officer has made a bench ruling and has on the record directed the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when a hearing officer has by written document served on all parties ordered the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the agency attorney may contact the hearing officer in connection with the preparation of the written document to be submitted to the hearing officer. (1-1-95)

b. Advisory Attorneys. Except as authorized by Subsection 423.01.a. of this rule, no agency attorney assigned to advise or assist the agency head or hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. An agency 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. (1-1-95)

03. The Agency Staff. (1-1-95)

a. Prosecutorial/Investigative Staff. Except as authorized by Subsection 423.01.a. of this rule, no member of the agency staff involved in the investigation or prosecution of the complaint shall discuss the substance of the complaint ex parte with the agency head, a hearing officer assigned to hear the complaint, or with any agency attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint, except as provided in Subsection 423.04.b. of this rule and in Subsections 425.01 and 425.03. (1-1-95)

b. Advisory Staff. Except as authorized by Subsection 423.01.a. of this rule, no agency staff assigned to advise or assist the agency head or hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. Agency staff 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. (1-1-95)

04. Hearing Officers. Hearing officers may discuss the substance of the complaint with attorneys of the agency assigned to advise or assist the hearing officer and with other hearing officers. Hearing officers may discuss the substance of the complaint with the agency head as authorized by Subsection 423.01.b of this rule. No hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint; except: (1-1-95)

a. Bench Rulings, etc. When a hearing officer has made a bench ruling and has on the record directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when a hearing officer has by written document served on all parties

directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the hearing officer may contact the attorney for the party or the agency attorney in connection with the preparation of the written document to be submitted to the hearing officer. (1-1-95)

b. Technical Calculations. If the consideration of the complaint requires technical calculations, etc., that can most efficiently be performed by a person who participated in the investigation or hearing, the hearing officer may direct that person to perform the calculations, etc., for the hearing officer's use in the recommended order or preliminary order. (1-1-95)

424. HEARING OFFICERS (RULE 424).

No hearing officer may discuss the substance of a complaint ex parte with any agency attorney or agency 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 agency's consideration of the complaint or pending judicial review of the agency's decision in the complaint, except as allowed in Subsections 423.02.a. and 423.04. A hearing officer may consult with any other hearing officer. A hearing officer may consult with the agency head as authorized by Subsections 423.01.b. and 425.01. A hearing officer may consult with an agency attorney assigned to advise or assist the hearing officer. The agency may appoint as a hearing officer the agency attorney who will advise or assist the agency head in consideration of the complaint, but this agency attorney cannot participate in the prosecution of the complaint or have ex parte contact with any party to the complaint or the agency's prosecutorial/investigative staff. (1-1-95)

425. AGENCY HEAD'S CONSIDERATION OF RECOMMENDED OR PRELIMINARY ORDER (RULE 425).

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff, and hearing officers after the hearing officer's recommended order or preliminary order has been placed before the agency head for review. (1-1-95)

01. The Agency Head. In considering the hearing officer's recommended order or preliminary order, the agency head may consult with an agency attorney assigned to advise or assist the agency head and with agency staff who did not participate in the investigation or prosecution of the complaint. As allowed in Subsection 423.01.b. when one (1) or more members of the agency head and the hearing officer hear the complaint, the agency head may consult with the hearing officer who heard the complaint and prepared the recommended order or preliminary order or with other hearing officers. The agency head shall not discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint; except: (1-1-95)

a. Bench Rulings, etc. When the agency head has made a bench ruling and has on the record directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when the agency head has by written document served on all parties directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the agency head may contact the attorney for the party or the agency attorney in connection with the preparation of the written document to be submitted to the agency head. (1-1-95)

b. Technical Calculations. If the consideration of the complaint requires technical calculations, etc., that can most efficiently be performed by a person who participated in the investigation or hearing, the agency head may direct that person to perform the calculations, etc., for the agency head's use in the final order. (1-1-95)

02. The Agency Attorney. (1-1-95)

a. Prosecutorial/Investigative Attorneys. No agency attorney involved in the investigation or prosecution of a complaint shall consult with the agency head considering the hearing officer's recommended order or preliminary order, except as provided in Subsections 423.01 and 423.02.a. An agency attorney who was involved in the investigation or prosecution of the complaint may attend public meetings of the agency head that consider 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 agency's

prosecutorial/investigative attorneys. (1-1-95)

b. Advisory Attorneys. An agency attorney assigned to advise or assist the agency head in consideration of the complaint may consult with the agency head in preparation for or while the agency head is considering the hearing officer's recommended order or preliminary order or draft final order when one or more members of the agency head heard the case with the hearing officer. (1-1-95)

03. The Agency Staff. (1-1-95)

a. Prosecutorial/Investigative Staff. No member of the agency staff involved in the investigation or prosecution of the complaint shall consult with the agency head in its consideration of the recommended order or preliminary order, but a member of the agency staff who participated in the investigation or prosecution of the complaint may provide technical computations, etc., at the direction of the agency head as provided in Subsection 425.01 of this rule. (1-1-95)

b. Advisory Staff. Any member of the agency staff assigned to advise or assist the agency head may consult with the agency head at the agency head's direction. (1-1-95)

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 or preliminary order. A hearing officer may consult with a member of the agency head or the entire agency head or attorneys assigned to advise or assist the agency head only as allowed by Subsections 423.01.b. and 423.04 and Subsection 425.01.a. of this rule when one (1) or more members of the agency head and the hearing officer heard the complaint. (1-1-95)

426. -- 499. (RESERVED)

Rules 500 through 699
Post-Pleading Procedure

Rules 500 through 509
Alternative Dispute Resolution (ADR)

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).
The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, factfinding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (3-24-93)

501. NEUTRALS (RULE 501).
When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (3-24-93)

502. CONFIDENTIALITY RULE 502).
Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or agency rule to be make public. (3-24-93)

503. -- 509. (RESERVED)

Rules 510 through 519
Prehearing Conferences

510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).
The presiding officer may by order or notice issued to all parties and to all interested persons as defined in Section 158 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 authorized before the agency, 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. (7-1-97)

511. NOTICE OF PREHEARING CONFERENCE (RULE 511).
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. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act (See Rule 551). (3-24-93)

512. RECORD OF CONFERENCE (RULE 512).
Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. (3-24-93)

513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).
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. (3-24-93)

514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).
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. (3-24-93)

515. -- 519. (RESERVED)

Rules 520 through 549
Discovery-Related Prehearing Procedures

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized by these rules in contested cases are: (7-1-97)

a. Depositions; (3-24-93)

b. Production requests or written interrogatories; (3-24-93)

c. Requests for admission; (3-24-93)

d. Subpoenas; and (3-24-93)

e. Statutory inspection, examination (including physical or mental examination), investigation, etc. (3-24-93)

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, when discovery is authorized before the agency, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (7-1-97)

521. WHEN DISCOVERY AUTHORIZED (RULE 521).
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 agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to compel discovery. (7-1-97)

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).
All parties to a proceeding have a right of discovery of all other parties to a proceeding as allowed by Rule 521 and the agency's authorizing statutes and rules. Rules 523 through 525, 527 and 528 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. (7-1-97)

523. DEPOSITIONS (RULE 523).
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. (3-24-93)

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).
Production requests or written interrogatories 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. (3-24-93)

525. SUBPOENAS (RULE 525).
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. (3-24-93)

526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (RULE 526).
This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination), investigation, etc. 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, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. (3-24-93)

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 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. (3-24-93)

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 order compelling discovery. (3-24-93)

529. EXHIBIT NUMBERS (RULE 529).
The agency assigns exhibit numbers to each party. (3-24-93)

530. PREPARED TESTIMONY AND EXHIBITS (RULE 530).
Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony. (3-24-93)

531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).
The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (3-24-93)

532. PROTECTIVE ORDERS (RULE 532).
As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. (3-24-93)

533. -- 549. (RESERVED)

Rules 550 through 599
Hearings – Miscellaneous Procedure

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 agency 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 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, 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 of the rules of procedure. (3-24-93)

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 Americans 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 upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be made. (3-24-93)

552. HOW HEARINGS HELD (RULE 552).
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. (3-24-93)

553. CONDUCT AT HEARINGS (RULE 553).
All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. (3-24-93)

554. CONFERENCE AT HEARING (RULE 554).
In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of

procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. (3-24-93)

555. PRELIMINARY PROCEDURE AT HEARING (RULE 555).
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. (3-24-93)

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. (3-24-93)

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 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. (3-24-93)

558. ORDER OF PROCEDURE (RULE 558).
The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (3-24-93)

559. TESTIMONY UNDER OATH (RULE 559).
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. (3-24-93)

560. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 560).
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. (3-24-93)

561. CONTINUANCE OF HEARING (RULE 561).
The presiding officer may continue proceedings for further hearing. (3-24-93)

562. RULINGS AT HEARINGS (RULE 562).
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. (3-24-93)

563. ORAL ARGUMENT (RULE 563).
The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (3-24-93)

564. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 564).
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 of the officer and ask the parties for comment upon the officer's proposed order. (3-24-93)

565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).
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. (3-24-93)

566. JOINT HEARINGS (RULE 566).
The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. (3-24-93)

567. -- 599. (RESERVED)

Rules 600 through 609
Evidence in Contested Cases

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).
Evidence should be taken by the agency to assist the parties' development of the 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. (3-24-93)

601. DOCUMENTARY EVIDENCE (RULE 601).
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. (3-24-93)

602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).
Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts within the agency's specialized knowledge. 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. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. (3-24-93)

603. DEPOSITIONS (RULE 603).
Depositions may be offered into evidence. (3-24-93)

604. OBJECTIONS -- OFFERS OF PROOF (RULE 604).
Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. 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. (3-24-93)

605. PREPARED TESTIMONY (RULE 605).
The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Rule 600. (3-24-93)

606. EXHIBITS (RULE 606).
Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts,

photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. 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 identified at hearing are subject to appropriate and timely objection 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 advance approval of the presiding officer. (3-24-93)

607. -- 609. (RESERVED)

Rules 610 through 649
Settlements

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).
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. (3-24-93)

611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).
Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (3-24-93)

612. CONSIDERATION OF SETTLEMENTS (RULE 612).
Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. (3-24-93)

613. BURDENS OF PROOF (RULE 613).
Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (3-24-93)

614. SETTLEMENT NOT BINDING (RULE 614).
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. (3-24-93)

615. -- 649. (RESERVED)

Rules 650 through 699
Records for Decisions

650. RECORD FOR DECISION (RULE 650).

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. (3-24-93)

02. Contents. The record for a contested case shall include: (3-24-93)

a. All notices of proceedings; (3-24-93)

b. All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (3-24-93)

c. All intermediate or interlocutory rulings of hearing officers or the agency head; (3-24-93)

d. All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (3-24-93)

e. All offers of proof, however made; (3-24-93)

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; (3-24-93)

g. All evidentiary rulings on testimony, exhibits, or offers of proof; (3-24-93)

h. All staff memoranda or data submitted in connection with the consideration of the proceeding; (3-24-93)

i. A statement of matters officially noticed; and (3-24-93)

j. All recommended orders, preliminary orders, final orders, and orders on reconsideration. (3-24-93)

651. RECORDING OR REPORTING OF HEARINGS (RULE 651).
All hearings shall be recorded on audiotape or videotape or may be taken by a qualified court reporter 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. (7-1-97)

652. -- 699. (RESERVED)

Rules 700 through 799
Agency Orders and Review of Agency Orders

Rules 700 through 710
Defaults

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR (RULE 700).
If an applicant or claimant or appellant, petitioner, complainant, or moving party fails to appear at the time and place set for hearing on an application or claim or appeal, petition, complaint, or motion, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. 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 applicant or claimant or appellant, petitioner, complainant or moving 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. (3-24-93)

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).
Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (3-24-93)

702. ISSUANCE OF DEFAULT ORDER (RULE 702).
The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the

defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. If authorized by statute or rule, costs may be assessed against a defaulting party. (3-24-93)

703. -- 709. (RESERVED)

Rules 710 through 789
Interlocutory, Recommended, Preliminary and
Final Orders – Review or Stay of Orders

710. INTERLOCUTORY ORDERS (RULE 710).
Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (3-24-93)

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. (3-24-93)

712. -- 719. (RESERVED)

720. RECOMMENDED ORDERS (RULE 720).

01. Definition. Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. (3-24-93)

02. Content. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

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. (3-24-93)

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. (3-24-93)

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 head (or designee of the agency head) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-24-93)

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS (RULE 730).

01. Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. (3-24-93)

02. Content. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order 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 67-5243(3), Idaho Code. (3-24-93)

b. Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (3-24-93)

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (3-24-93)

d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and 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 head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-24-93)

e. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the 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: (3-24-93)

i. A hearing was held, (3-24-93)

ii. The final agency action was taken, (3-24-93)

iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or (7-1-97)

iv. The real property or personal property that was the subject of the agency action is located. (3-24-93)

f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. 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. (3-24-93)

731. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Definition. Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code. Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the agency will not issue further orders or conduct further proceedings in the matter. (3-24-93)

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: (3-24-93)

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. (3-24-93)

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: (3-24-93)

i. A hearing was held, (3-24-93)

ii. The final agency action was taken, (3-24-93)

iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or (7-1-97)

iv. The real property or personal property that was the subject of the agency action is located. (3-24-93)

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. (3-24-93)

741. ORDERS REGARDING COSTS AND/OR FEES (RULE 741).

01. Scope of Rule. This rule provides procedures for considering requests for costs and/or fees (including attorneys' fees) when an agency has authority to award costs and/or fees under other provisions of law. This rule is not a source of authority for awarding costs and/or fees. (4-7-11)

02. Time for Filing for Costs and/or Fees Awarded in Final Order or Preliminary Order. Unless otherwise provided by statute or rule of the agency: (4-7-11)

a. Minimum time for filing. When a final order or a preliminary order of the agency awards costs and/or fees to a party or to the agency itself, the agency must allow no fewer than fourteen (14) days from the service date of the final order or the preliminary order for the party to whom costs and/or fees were awarded or for the agency to file necessary papers (e.g., a memorandum of costs, affidavits, exhibits, etc.) quantifying and otherwise supporting costs or fees, or both, that will be claimed or a motion to extend the time to file for costs and fees. (4-7-11)

b. Longer time allowed. The final order or preliminary order of the agency may extend the time to file papers for costs and/or fees beyond fourteen (14) days after the service date of the final order or preliminary order. (4-7-11)

c. When time not set forth. If statute, rules of the agency, and the final order or preliminary order of the agency are silent on the time for filing for costs and/or fees the deadline for filing for costs and/or fees and/or for moving for an extension of the time to file for costs and fees is fourteen (14) days from the service date of the final

order or preliminary order. (4-7-11)

d. Untimely filing. The agency may exercise its discretion to consider and grant an untimely filing for costs and/or fees for good cause shown. (4-7-11)

e. Contents of filing. No particular form for filing for costs and fees is required, but in the absence of a statute or rule providing for standard costs and/or fees the papers supporting a claim for costs and/or fees should ordinarily contain an affidavit or declaration under oath detailing the costs and/or fees claimed. (4-7-11)

f. Supplemental filings. Paragraphs 741.02.a. through 741.02.e. of this rule do not prohibit a party or the agency from supplementing a filing for costs and/or fees. (4-7-11)

03. Time for Petitioning for Costs and/or Fees When Costs and/or Fees Not Awarded in Final Order or Preliminary Order. Unless otherwise provided by statute: (4-7-11)

a. Petition for reconsideration. When a final order or preliminary order of the agency does not award costs or fees to a party, and a party contends that the party is entitled to an award of costs and/or fees the party must file a petition for reconsideration addressing costs and/or fees within fourteen (14) days of the service date of the final order or preliminary order if the party wishes the agency to award costs and/or fees. (4-7-11)

b. Combination with other issues. The petition for reconsideration on costs and/or fees may be combined with a petition for reconsideration on other issues. (4-7-11)

c. Quantification not necessary. The petition for reconsideration can confine itself to the legal issue of entitlement to costs and/or fees and need not quantity the party's claimed costs and/or fees. However, the petition can be accompanied by papers quantifying the claimed costs and/or fees. (4-7-11)

d. Legal authority. Every petition for reconsideration filed under Subsection 741.03 should cite the source of the agency's legal authority to award costs and/or fees. The agency may (but need not) deny a petition that omits a citation to legal authority to award costs and/or fees. (4-7-11)

04. Oppositions. Unless otherwise provided by statute or rule of the agency, or extended by notice or order or the agency, oppositions to requests for costs and/or fees filed under Subsections 741.02 or 741.03 of this rule or motions to extend the time to oppose requests for costs and/or fees filed under Subsections 741.02 or 741.03 of this rule must be filed and served within fourteen (14) days of the service date of the petition to be timely. The agency may exercise its discretion to consider and grant an untimely opposition for good cause shown. (4-7-11)

05. Orders Granting or Denying Costs and/or Fees. Every agency order granting or denying a request for costs and/or fees must cite the statutes or rules under which it is deciding the request for costs and/or fees. (4-7-11)

742. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).
If an order is not designated as recommended, preliminary or final at its release, but is designated as recommended, preliminary 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 a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. (3-24-93)

751. -- 759. (RESERVED)

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).
A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final

because no party challenged it or a final order issued by the agency head itself) 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. (3-24-93)

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, preliminary 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. (3-24-93)

771. -- 779. (RESERVED)

780. STAY OF ORDERS (RULE 780).
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. (3-24-93)

781. -- 789. (RESERVED)

Rules 790 through 799
Appeal to District Court

790. PERSONS WHO MAY APPEAL (RULE 790).
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. (3-24-93)

791. NOTICE OF APPEAL (RULE 791).
The notice of appeal must be filed with the agency and with the district court and served on all parties. (3-24-93)

01. Filing. Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the District Court of the county in which: (3-24-93)

a. The hearing was held, (3-24-93)

b. The final agency action was taken, (3-24-93)

c. The party seeking review of the agency action resides, or operates its principal place of business in Idaho, or (7-1-97)

d. The real property or personal property that was the subject of the agency is located. (3-24-93)

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: (3-24-93)

a. Of the service date of the final order, (3-24-93)

b. Of the denial of the petition for reconsideration, or (3-24-93)

c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (3-24-93)

792. -- 799. (RESERVED)

SUBCHAPTER C – RULEMAKING
Rules 800 through 860
Rulemaking

Rules 800 through 809
Introduction

800. FORMAL AND INFORMAL RULEMAKING (RULE 800).
Formal rulemaking refers only to rulemaking procedures associated with formal notice of proposed rulemaking, receipt of and consideration of written or oral comment on the record in response to notice of proposed rulemaking, and adoption of rules. Informal rulemaking refers to informal procedures for development of, comment upon, or review of rules for later formal consideration. No rule may come into effect solely as a result of informal rulemaking. Agreements coming from informal rulemaking must be finalized by formal rulemaking. (3-24-93)

801. -- 809. (RESERVED)

Rules 810 through 819
Informal, Negotiated Rulemaking

810. LEGISLATIVE PREFERENCE FOR NEGOTIATED RULEMAKING PROCEDURES (RULE 810).
This rule addresses informal, negotiated rulemaking as described by Section 67-5220, Idaho Code. The agency, when feasible, shall proceed by informal, negotiated rulemaking in order to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rulemaking; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. (3-24-93)

811. PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN (RULE 811).
If the agency determines that informal, negotiated rulemaking is feasible, it shall 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 shall explain in its notice of intent to promulgate rules why informal rulemaking is not feasible and shall 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 representatives 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. (3-24-93)

812. CONTENTS OF NOTICE OF INTENT TO PROMULGATE RULES (RULE 812).
The notice of intent to promulgate rules shall announce that the agency intends to proceed by way of informal, negotiated rulemaking to develop a proposed rule and shall include: (3-24-93)

01. Subject Matter. A brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking. (3-24-93)

02. Authority. The statutory authority for the rulemaking. (3-24-93)

03. Obtain Copy. An explanation how to obtain a preliminary draft of the proposed rules, if one is available. (3-24-93)

04. Issues. The principal issues involved and the interests which are likely to be significantly affected by the rule. (3-24-93)

05. Agency Contacts. The person(s) designated to represent the agency. (3-24-93)

06. Method of Participation. An explanation how a person may participate in the informal, negotiated rulemaking. (3-24-93)

07. Schedule. A proposed schedule for written comments or for a public meeting of interested persons, and a target date, if one exists, to complete negotiation and to publish a proposed rule for notice and comment. (3-24-93)

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. (3-24-93)

814. REPORTS TO THE AGENCY (RULE 814).
If the parties reach a consensus on a proposed rule, they shall transmit to the agency a report stating their consensus and, if appropriate, a draft of a proposed rule incorporating that consensus. If the parties are unable to reach a consensus on particular issues, they may transmit to the agency a report specifying those areas on which they reached consensus and those on which they did not, together with arguments for and against positions advocated by various participants. The participants or any individual participant may also include in a report any information, recommendations, or materials considered appropriate. (3-24-93)

815. AGENCY CONSIDERATION OF REPORT (RULE 815).
The agency may accept in whole or in part or reject the consensus reached by the parties in publishing a proposed rule for notice and comment. (3-24-93)

816. -- 819. (RESERVED)

Rules 820 through 829
Petition to Initiate Rulemaking

820. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING (RULE 820).
This rule addresses petitions to initiate rulemaking as described by Section 67-5230, Idaho Code. (3-24-93)

01. Requirement. Any person petitioning for initiation of rulemaking must substantially comply with this rule. (3-24-93)

02. Form and Contents. The petition must be filed with the agency and shall: (3-24-93)

a. Identify the petitioner and state the petitioner's interest(s) in the matter; (3-24-93)

b. Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and (3-24-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

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, unless the rulemaking authority is in a multi-member agency board or commission whose members are not full-time officers or employees of the state, in which case the multi-member board or commission shall have until the first regularly scheduled meeting of the multi-member board or commission that takes place seven (7) or more days after submission of the petition to 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. (7-1-97)

02. Denial. If the petition is denied, the written denial shall state: (3-24-93)

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. (3-24-93)

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 in which: (3-24-93)

i. The hearing was held, (3-24-93)

ii. This final agency action was taken, (3-24-93)

iii. The party seeking review resides, or operates its principal place of business in Idaho, or (7-1-97)

iv. The real property or personal property that was the subject of the denial of the petition for rulemaking is located. (3-24-93)

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. (3-24-93)

822. NOTICE OF INTENT TO INITIATE RULEMAKING CONSTITUTES ACTION ON PETITION (RULE 822).

The agency may initiate rulemaking proceedings in response to a petition to initiate rulemaking by issuing a notice of intent to promulgate rules in the Idaho Administrative Bulletin on the subject matter of the petition if it wishes to obtain further comment whether a rule should be proposed or what rule should be proposed. Issuance of a notice of intent to promulgate rules satisfies an agency's obligations to take action on the petition and is not a denial of a petition to initiate rulemaking. (3-24-93)

823. -- 829. (RESERVED)

Rules 830 through 839
Procedure on Rulemaking for Proposed and Pending Rules

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

01. Content of Notice of Proposed Rulemaking. Every notice of proposed rulemaking filed with the Coordinator for publication in the Bulletin shall include: (4-7-11)

a. A statement of the specific statutory authority authorizing the rulemaking, including a citation to the specific section of Idaho Code that has occasioned the rulemaking or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; (4-7-11)

b. A statement in nontechnical language of the substance of the proposed rules, including a specific description of any fee or charge being imposed or increased; (4-7-11)

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. If the agency intends to take oral testimony on the proposed rule, the location, date and time of any public hearing must be included; (4-7-11)

d. A specific description, if applicable, of any negative fiscal effect on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year in which the pending rule will become effective; (4-7-11)

e. The mailing address to which written comments and requests for public hearings concerning the proposed rules must be mailed. If the agency accepts comments and requests by facsimile transmission (FAX) or by e-mail, the FAX number or e-mail address, or both, at which comments may be delivered must be provided; (4-7-11)

f. The name and telephone number of an agency contact to whom technical questions about the

proposed rules may be referred; (4-7-11)

g. The deadline date for the submission of written comment on the proposed rules and for submitting requests for an opportunity for an oral presentation concerning the proposed rules; (4-7-11)

h. A statement whether negotiated rulemaking has been conducted, and if not, why not; and (4-7-11)

i. The text of the proposed rules in legislative format. (4-7-11)

02. Filing a Proposed Rulemaking for Publication in the Bulletin. (4-7-11)

a. In all cases. The agency must file the information required in Subsection 830.01 of this rule with the Coordinator for publication in the Bulletin. The Coordinator is responsible for transmitting all required rulemaking documents to the Director of Legislative Services for analysis. (4-7-11)

b. When fees are imposed or increased. In addition, if a fee or charge is imposed or increased through the proposed rulemaking, the agency must prepare and file with the Coordinator a statement of economic impact. This cost/benefit analysis must reasonably estimate the agency's costs to implement the rule and reasonably estimate the costs that would be borne by citizens, the private sector, or both, if the fees or charges being proposed are imposed by the rule. The cost/benefit analysis is not part of the proposed rulemaking notice and is not published in the Bulletin; it is a separate document that is submitted as part of the proposed rulemaking filing. (4-7-11)

03. Incorporation by Reference. If an agency proposes to incorporate by reference into its rules any codes, standards or rules authorized by subsection 67-5229(1), Idaho Code, for incorporation by reference, the agency's notice of proposed rulemaking must also include the following information required by subsection 67-5229(2), Idaho Code: (4-7-11)

a. Required information. A brief synopsis explaining why the incorporation is needed. (4-7-11)

b. Electronic link or other access. A statement that notes where an electronic copy can be obtained or that provides an electronic link to the incorporated materials. If an electronic link is provided, at a minimum the link must be posted on the agency's website or included in the rule that is published in the Administrative Code on the Coordinator's website. If the incorporated material is copyrighted or otherwise unavailable, the rule must note where a copy of the incorporated materials may be viewed or purchased. (4-7-11)

c. Identification of version or edition incorporated. The agency must provide all of the information required by Subsection 67-5229(2), Idaho Code, regarding identifying with specificity the version or edition of the code, standard or rule that is incorporated by reference, including, but not limited to, the date the document was published, approved or adopted, or became effective. (4-7-11)

d. Example incorporations. The following are examples of the kind of specificity required by this Section and by Subsection 67-5229(2), Idaho Code: (4-7-11)

i. 2009 Edition of the International Building Code, published by the International Code Council, available online at http://www.constructionbook.com/2009-international-building-code/; (4-7-11)

ii 2009 International Fire Code, published by International Code Council. Copies of the 2009 edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal. Copies of the 2009 International Fire Code are available for purchase from the International Code Council, Northwest Resource Center, PO Box 8004, Bellevue, WA 98004. (4-7-11)

iii. Code of Federal Regulations, Title 40, Part 35 Environmental Protection Agency's Regulations for State and Local Assistance under the Clean Water Act, Subpart A (July 1, 2009), available online at http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=35&SUBPART=A&TYPE=PDF&YEAR=2009; and (4-7-11)

iv. Federal Regulations adopted by the Drug Enforcement Agency, Department of Justice, published in

the Federal Register; Amendments to Code of Federal Regulations, 21 CFR Part 1300, section 1300.01, Definitions of Schedule III Controlled Substances, 74 Federal Register No. 232, page 63609 (December 4, 2009), available online at http://www.nigc.gov/LinkClick.aspx?fileticket=_YB0eC63Jh4%3D&tabid=57&mid=345. (4-7-11)

831. INFORMAL PHASES OF FORMAL RULEMAKING (RULE 831).
In addition to the formal phases of rulemaking proceedings, the agency may schedule meetings after the formal proposal of rules to explain the operation of the rules proposed. (3-24-93)

832. COMMENTS ON PROPOSED RULES (RULE 832).
Deadlines for comment upon proposed rules or amendments to proposed rules will be set forth in the Idaho Administrative Bulletin. Comments should be made to the officers listed in the notices of proposed rulemaking published in the Idaho Administrative Bulletin. Further information concerning individual rulemaking should be directed to the contact person listed for that rulemaking in the Idaho Administrative Bulletin. (3-24-93)

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. (3-24-93)

02. Content. The petition shall: (3-24-93)

a. Identify the petitioner and state the petitioner's interests in the matter, (3-24-93)

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 (3-24-93)

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. (3-24-93)

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 requested 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 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. If oral presentation is granted, notice of the oral presentation shall be published in the Idaho Administrative Bulletin. If oral presentation is denied, the denial shall state the grounds for denial. (3-24-93)

834. THE RULEMAKING RECORD (RULE 834).
The agency shall maintain a record of each rulemaking proceeding. (3-24-93)

01. Contents. The record for a rulemaking proceeding shall include: (3-24-93)

a. Copies of all publications in the Idaho Administrative Bulletin relating to that rulemaking proceeding; (3-24-93)

b. All written petitions, submissions, and comments received by the agency, and the agency's responses to those petitions, submissions and comments; (3-24-93)

c. All written materials considered by the agency in connection with formulating the proposal or adoption of the rule; (3-24-93)

d. A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and (3-24-93)

e. Any other materials or documents prepared in conjunction with the rulemaking, including any summaries prepared for the agency in considering the rulemaking. (3-24-93)

02. Recording or Reporting. All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at their own expense. (7-1-97)

835. ADOPTION AND PUBLICATION OF PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION (RULE 835).

01. Adoption. After the expiration of the written comment period for rulemaking and following any oral presentation on the rulemaking, but no sooner than seven (7) days after the expiration of the comment period, the agency shall consider fully all issues presented by the written and oral submissions respecting the proposed rule before adopting a pending rule. (7-1-97)

02. Publication. Upon the agency's adoption of a pending rule, the agency shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the agency need not publish the full text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and must note all changes that have been made. In addition, the agency must publish in the bulletin a concise explanatory statement containing: (7-1-97)

a. The reasons for adopting the pending rule; (7-1-97)

b. A statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes; (7-1-97)

c. The date on which the pending rule will become final and effective pursuant to Section 67-5224(5), Idaho Code; (7-1-97)

d. A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature; (7-1-97)

e. An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and (7-1-97)

f. A statement how to obtain a copy of the agency's written review of and written responses to the written and oral submissions respecting the proposed rule. (7-1-97)

03. Rule Imposing or Increasing Fees. When any pending rule imposes a new fee or charge or increases an existing fee or charge, the agency shall provide the coordinator with a description of that portion of the rule imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. (7-1-97)

836. FINAL RULES (RULE 836).
Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in Section 67-5224, Idaho Code. (7-1-97)

837. -- 839. (RESERVED)

840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES (RULE 840).

01. Gubernatorial Finding. The agency may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the

Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge. (7-1-97)

02. Effective Date. Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective. (7-1-97)

03. Expiration. In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule that has become effective pursuant to Section 67-5224(5), Idaho Code. (7-1-97)

04. Notice and Publication. Agencies shall give such notice as is practicable in connection with adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (7-1-97)

05. Associated Proposed Rule. Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, an agency must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final. (7-1-97)

841. -- 849. (RESERVED)

850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES (RULE 850).
The agency may amend pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will be incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. (7-1-97)

851. -- 859. (RESERVED)

860. PERSONS WHO MAY SEEK JUDICIAL REVIEW (RULE 860).
Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an agency rule (either temporary or final) may seek judicial review in district court. (3-24-93)

01. Filing. The petition for judicial review must be filed with the agency and with the district court and served on all parties. Pursuant to Section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: (3-24-93)

a. The hearing was held; (3-24-93)

b. The final agency action was taken; (3-24-93)

c. The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (7-1-97)

d. The real property or personal property that was the subject of the agency is located. (3-24-93)

02. Time. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (3-24-93)

861. -- 999. (RESERVED)

Subject Index

A

Administrative Appeal 7
Adoption & Publication Of Pending Rules Following Comment Or Oral Presentation
  Adoption 43
  Publication 43
  Rule Imposing or Increasing Fees 43
Adoption And Publication Of Pending Rules Following Comment Or Oral Presentation 43
Agency Consideration Of Report 39
Agency Head's Consideration Of Recommended Or Preliminary Order 24
  Hearing Officers 25
  The Agency Attorney 24
  The Agency Head 24
  The Agency Staff 25
Agency Response To Petition 39
  Action of Agency 39
  Denial 39
Alternative Resolution Of Contested Cases 25
Amendments To Pleadings--Withdrawal Of Pleadings 17
Answers -- Defined -- Form & Contents -- Time For Filing 15
  Answers to Motions 15
  Answers to Pleadings Other Than Motions 15
Answers To Production Requests Or Written Interrogatories & To Requests For Admission 27
Applicants/Claimants/Appellants 11
Applications/Claims/Appeals -- Defined -- Form & Contents 13
  Applications/Claims/Appeals Defined 13
  Form & Content 13
Appointment Of Hearing Officers 19

B

Briefs--Memoranda--Proposed Orders Of The Parties--Statements Of Position--Proposed Order Of The Presiding Officer 29
Burdens Of Proof 31

C

Challenges To Statutes 20
Clarification Of Orders 37
Comments On Proposed Rules 42
Communications With Agency 9
Complainants 11
Complaints -- Defined -- Form & Contents 14
  Complaints Defined 14
  Form & Contents 14
Computation Of Time 10
Conduct At Hearings 28
Conduct Required 13
Conference At Hearing 28
Confidentiality 25
Confidentiality Of Settlement Negotiations 31
Consent Agreements -- Defined -- Form & Contents 15
  Additional 16
  Consent Agreements Defined 15
  Requirements 16
Consideration Of Consent Agreement Or Other Settlements Before Complaint Issued 22
  Agency Head Consideration of Consent Agreement 22
  Negotiations 22
  Presentation of Consent Agreement to Agency Head 22
Consideration Of Settlements 31
Consolidation Of Proceedings 29
Contents Of Notice Of Intent To Promulgate Rules 38
  Agency Contacts 38
  Authority 38
  Issues 38
  Method of Participation 38
  Obtain Copy 38
  Schedule 39
  Subject Matter 38
Continuance Of Hearing 29
Contrast Between Agency's Prosecutorial/Investigative & Adjudicatory Functions 21
  Adjudicatory Function 21
  Prosecutorial/Investigative Function 21
Correction Of Typographical, Transcription Or Clerical Errors In Pending Rules 44

D

Defective, Insufficient Or Late Pleadings 17
Definitions, IDAPA 04.11.01
  Administrative Code 7
  Agency 7
  Agency Action 7
  Agency Head 7
  Bulletin 7
  Contested Case 7
  Coordinator 7
  Definitions 7
  Document 7
  Final Rule 8
  License 8
  Official Text 8
  Order 8
  Party 8
  Pending Rule 8
  Person 8
  Proposed Rule 8
  Provision of Law 8
  Publish 8
  Rule 8
  Rulemaking 9
  Service or Serving 9
  Submitted for Review 9
  Temporary Rule 9
Depositions 27
Depositions, Offered Into Evidence 30
Disqualification Of Officers Hearing Contested Cases 19
Documentary Evidence 30

E

Ex Parte Communications 20
Exhibit Numbers 28
Exhibits 30

F

Facilities At Or For Hearing & ADA Requirements 28
Facts Disclosed Not Part Of The Record 26
Fees & Remittances 10
Filing & Service Of Discovery-Related Documents 27
Filing Documents With The Agency--Number Of Copies--Facsimile Transmission (FAX) 16
Filing Of Documents--Number Of Copies 9
Final Orders 35
  Content 35
  Definition 35
Final Rules 43
Form & Contents of Petition For Declaratory Rulings 18
  Form 18
  Legal Assertions 18
Form & Contents Of Petition To Initiate Rulemaking
  Form & Contents 39
  Requirement 39
Form & Contents of Petitions To Intervene 17
Form And Contents Of Petition To Initiate Rulemaking 39
Form Of Pleadings 16
  Example 16
  Form 16

Formal & Informal Rulemaking 38
Formal Proceedings 11
Further Proceedings 11

G

Granting Petitions To Intervene 18

H

Hearing Officers 24
Hearing Officers Contrasted With Agency Head 19
How Hearings Held 28

I

Identification Of Communications 9
Informal Phases Of Formal Rulemaking 42
Informal Procedure 10
Informal Proceedings Defined 10
Informal Proceedings Do Not Exhaust Administrative Remedies 11
Initial Pleading By Party--Listing Of Representatives 12
Interlocutory Orders 33
Intervenors 11
Issuance Of Default Order 32

J

Joint Hearings 30

K

Kinds & Scope Of Discovery Listed 26
- Kinds of Discovery 26
- Rules of Civil Procedure 27

L

Legal Authority 7
Legislative Preference For Negotiated Rulemaking Procedures 38
Liberal Construction 9

M

Modification Of Order On Presiding Officer's Own Motion 36
Motions -- Defined -- Form & Contents -- Time For Filing 15
- Form & Contents 15
- Motions Defined 15
- Oral Argument -- Time for Filing 15

N

Neutrals 25
Notice Of Appeal 37
- Filing 37
- Time 37

Notice Of Hearing 28
Notice Of Intent To Initiate Rulemaking Constiturtes Action On Petition 40
Notice Of Petition For Declaratory Ruling 18
Notice Of Prehearing Conference 26
Notice Of Proposed Default After Failure To Appear 32

O

Objections--Offers of Proof 30
Official Notice--Agency Staff Memoranda 30
Oral Argument, Contested Case 29
Order Granting Intervention Necessary 17
Order Not Designated 36
Order Of Procedure 29
Orders Granting Intervention--Opposition 18
Orders Regarding Costs & Fees
- Oppositions 36
- Orders Granting or Denying Costs and/or Fees 36
- Scope of Rule 35
- Time for Filing for Costs and/or Fees Awarded in Final Order or Preliminary Order 35
- Time for Petitioning for Cost and/ or Fees When Costs and/or Fees Not Awarded in Final Order or Preliminary Order 36

Orders Regarding Costs And/Or Fees 35
Orders Resulting From Prehearing Conference 26

P

Parties & Persons With Similar Interests 29
Parties To Contested Cases Listed 11
Persons Defined--Persons Not Parties--Interested Persons 12
Persons Who May Appeal 37
Persons Who May Seek Judicial Review 44
- Filing 44
- Time 44

Petitioners 11
Petitions -- Defined -- Form & Contents 13
- Form & Contents 14
- Petitions Defined 14

Petitions For Declaratory Rulings To Be Decided By Order 19
- Content 19
- Final Agency Action 19

Petitions For Oral Presentation 42
- Content 42
- Oral Presentation 42
- Requirement 42

Pleadings Listed--Miscellaneous 13
Preliminary Orders 34
- Content 34
- Definition 34

Preliminary Procedure At Hearing 29
Prepared Testimony 30
Prepared Testimony & Exhibits 28
Presiding Officer(s) 20
Procedure For Adoption Of Temporary Rules 43
- Associated Proposed Rule 44
- Effective Date 44
- Expiration 44
- Gubernatorial Finding 43
- Notice & Publication 44

Procedure On Prehearing Motions 29
Procedures After Issuance Of A Complaint & Before The Agency Head's Consideration Of The Complaint 22
- Hearing Officers 23
- The Agency Attorney 23
- The Agency Head 22
- The Agency Staff 23

Proceedings Governed 9
Production Requests Or Written Interrogatories & Requests For Admission 27
Proof Of Service 17
Protective Orders 28
Protestants 11
Protests -- Defined -- Form & Contents 14
- Form & Contents 14
- Protests Defined 14

Public Inquiries About Or Recommendations For Agency Issuance Of A Complaint 21
- Hearing Officers 22
- The Agency Attorney 21
- The Agency Head 21
- The Agency Staff 22

Public Meetings, Agency May Convene 39
Public Records Act Compliance 7
Public Witnesses 18
Publication In Idaho Administrative Bulletin 38
Purposes Of Prehearing Conferences 26

R

Recommended Orders 33
- Content 33
- Definition 33

Record For Decision 31
- Contents 31
- Requirement 31

Record Of Conference 26
Recording Or Reporting Of Hearings 32
Reference To Agency 9
Reports To The Agency 39
Representation Of Parties At Hearing 12
Representation Of Parties at Hearing
Appearances & Representation 12
Representatives 12
Requirements For Notice Of Proposed Rulemaking 40
Content of Notice of Proposed Rulemaking 40
Filing a Proposed Rulemaking for Publication in the Bulletin 41
Incorporation by Reference 41
Respondents 11
Review Of Interlocutory Orders 33
Review Of Rules 20
Rights Of Parties & Of Agency Staff 11
Rights To Discovery Reciprocal 27
Rules Of Evidence--Evaluation Of Evidence 30
Rulings At Hearings 29

S

Sanctions For Failure To Obey Order Compelling Discovery 28
Scope Of Authority Of Hearing Officers 20
Limitation 20
Scope of Authority 20
Service By Agency 9
Electronic Service 10
Personal Service & Service by Mail 10
Persons Served 10
Proof of Service 10
When Service Complete 10
Service On Parties & Other Persons 17
Service On Representatives Of Parties & Other Persons 13
Settlement Not Binding 31
Seven Days To Challenge Proposed Default Order 32
Statutory Inspection, Examination, Investigation, Etc.--Contrasted With Other Discovery 27
Stay Of Orders 37
Stipulations, Contested Cases 29
Subpoenas 27
Substitution Of Representative--Withdrawal Of Representative 13
Suggestion For Or Inquiry About Settlements 31

T

Taking Of Appearances--Participation By Agency Staff 12
Testimony Under Oath 29
The Rulemaking Record 42
Contents 42
Recording or Reporting 43
Timely Filing Of Petitions To Intervene 18
Title & Scope 7

W

When Discovery Authorized 27
Withdrawal Of Parties 13
Written Interpretations -- Agency Guidelines 7