IDAPA 37 – DEPARTMENT OF WATER RESOURCES

37.01.01 – Rules of Procedure of the Idaho Department of Water Resources

Who does this rule apply to?
General public.

What is the purpose of this rule?
This chapter contains the rules of procedure that govern contested case proceedings before the Department of Water Resources and the Idaho Water Resource Board.

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

Water Resource Board:
- Section 42-1701A, Idaho Code – Hearings Before Director – Appeals
- Section 42-1734(19), Idaho Code – Powers and Duties

Director of the Department of Water Resources:
- Section 42-1805(8), Idaho Code – Additional Duties

Idaho Administrative Procedure Act:"
- Section 67-5206(5), Idaho Code – Promulgation of Rules Implementing Administrative Procedure Act

Who do I contact for more information on this rule?

Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720
Phone: (208) 287-4800
Email: mathew.weaver@idwr.idaho.gov
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IDAPA 37 – DEPARTMENT OF WATER RESOURCES

37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES

SUBCHAPTER A – GENERAL PROVISIONS
(Rules 0 through 99)

000. LEGAL AUTHORITY (RULE 0).
This chapter is adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67-5206(5), Idaho Code. (3-20-20)T

001. TITLE AND SCOPE (RULE 1).

01. **Title**. The title of this chapter is "Rules of Procedure of the Idaho Department of Water Resources." (3-20-20)T

02. **Scope**. This chapter contains the rules of procedure that govern contested case proceedings before the Department of Water Resources and the Water Resource Board of the state of Idaho. (3-20-20)T

002. -- 004. (RESERVED)

005. DEFINITIONS (RULE 5).
As used in this chapter: (3-20-20)T

01. **Administrative Code**. The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. (3-20-20)T

02. **Agency**. The Department of Water Resources or the Water Resource Board acting within their respective authority to make rules or to determine contested cases. (3-20-20)T

03. **Agency Action**. Agency action means: (3-20-20)T

a. The whole or part of a rule or order; (3-20-20)T

b. The failure to issue a rule or order; or (3-20-20)T

c. An agency's performance of, or failure to perform, any duty placed on it by law. (3-20-20)T

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. (3-20-20)T

05. **Board**. The Idaho Water Resource Board. (3-20-20)T

06. **Bulletin**. The Idaho administrative bulletin established in Chapter 52, Title 67, Idaho Code. (3-20-20)T

07. **Contested Case**. A proceeding which results in the issuance of an order. (3-20-20)T

08. **Coordinator**. The Administrative Rules Coordinator Prescribed in Section 67-5202, Idaho Code. (3-20-20)T

09. **Department**. The Idaho Department of Water Resources. (3-20-20)T

10. **Director**. The agency head of the Idaho Department of Water Resources. (3-20-20)T

11. **Document**. Any proclamation, executive order, notice, rule or statement of policy of an agency. (3-20-20)T

12. **Electronically Signed Communication**. A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message in accordance with Rules 306 through 311 of

these rules. (3-20-20)T

13. **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. (3-20-20)T

14. **Official Text**. The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. (3-20-20)T

15. **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. (3-20-20)T

16. **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. (3-20-20)T

17. **Person**. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. For purposes of electronic signature rules, a human being or any organization capable of signing a document, either legally or as a matter of fact. (3-20-20)T

18. **Provision of Law**. The whole or a part of the state or federal constitution, or of any state or federal: (3-20-20)T

a. Statute; or (3-20-20)T

b. Rule or decision of the court. (3-20-20)T

19. **Publish**. To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (3-20-20)T

20. **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: (3-20-20)T

a. Law or policy, or (3-20-20)T

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: (3-20-20)T

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; (3-20-20)T

ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (3-20-20)T

iii. Intra-agency memoranda; or (3-20-20)T

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. (3-20-20)T

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

22. **Signer**. A person who signs a communication, including an electronically signed communication with the use of an acceptable technology to uniquely link the message with the person sending it. (3-20-20)T

006. (RESERVED)

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

01. **State Office**. The mailing address of the state office of the Idaho Department of Water Resources

and the office of the Idaho Water Resource Board is P.O. Box 83720, Boise, Idaho 83720-0098; the street address, subject to change, is 322 East Front Street, 6th Floor, Boise, Idaho 83702; the telephone number is (208) 287-4800; and the Facsimile Machine number is (208) 287-6700. Documents may be filed at the state office during regular business hours of 8:00 am to 5:00 pm Monday through Friday. (3-20-20)T

008. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 8).
In all rulemakings or contested cases, an original of all documents shall be filed with the Director of the Department of Water Resources or the Chairman of the Idaho Water Resource Board, as the case may be, showing service upon all other parties. No copies in addition to the original document need be filed with the agency unless requested by the agency. (3-20-20)T

009. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).
Rules 100 through 799 govern procedure before the Department and the Board in contested cases, unless otherwise provided by rule, notice or order of the agency. The Department and the Board through the promulgation of these rules decline in whole to adopt the contested case portion of the "Idaho Rules of Administrative Procedure of the Attorney General," cited as IDAPA 04.11.01.100 through 04.11.01.799. Rulemaking before the Department and the Board shall be governed by Rules 800 through 860 of the "Idaho Rules of Administrative Procedure of the Attorney General," cited as IDAPA 04.11.01.800 through 04.11.01.860. (3-20-20)T

051. REFERENCE TO AGENCY (RULE 51).
Reference to the agency in these rules includes the agency director, the board, hearing officer appointed by the agency or the board, or presiding officer, as context requires. Reference to the agency head means the agency director or the board, as context requires, or such other officer designated by the agency head or the board to review recommended or preliminary orders. (3-20-20)T

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, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (3-20-20)T

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. (3-20-20)T

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, if applicable. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (3-20-20)T

055. SERVICE BY AGENCY (RULE 55).
Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, complaints, and 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. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a state employee or state agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices 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. (3-20-20)T

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 Saturday, Sunday or a legal holiday. (3-20-20)T

057. ADDITIONAL TIME AFTER SERVICE BY MAIL (RULE 57).
Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period. This rule, however, shall not extend the time for filing a protest, a petition for reconsideration of a preliminary, recommended or final order before the agency, the time for filing exceptions with the agency head to a preliminary or recommended order, or the time for filing an appeal with the district court from a final decision of the agency. (3-20-20)T

058. FEES AND REMITTANCES (RULE 58).
If submitted by mail, fees and remittances to the agency may be paid by money order, bank draft or check payable to agency. Remittances in currency or coin, submitted by mail, are strongly discouraged and are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. The agency may, upon the completion of necessary arrangements by the agency, accept the payment of fees and remittances by credit card. Filings required to be accompanied by a fee are not complete until the fee is paid. (3-20-20)T

059. -- 099. (RESERVED)

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 230, 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. (3-20-20)T

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, consistent with Rule 417, 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. (3-20-20)T

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. (3-20-20)T

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 proceedings 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 subsequent formal proceeding. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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." (3-20-20)T

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." (3-20-20)T

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." (3-20-20)T

154. RESPONDENTS (RULE 154).
Persons against whom complaints are filed or about whom investigations are initiated are called "respondents." (3-20-20)T

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." (3-20-20)T

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." (3-20-20)T

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. (3-20-20)T

158. PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).
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. Persons not parties who have an interest in a proceeding are called "interested persons." Interested persons may participate in a proceeding as "public witnesses" in accordance with Rule 355. (3-20-20)T

159. -- 199. (RESERVED)

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. 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 person signing the pleading will be considered the party's representative. If an initial pleading is signed by more than one (1) person without identifying the representative(s) for service of documents, the presiding officer may select the person(s) upon whom documents are to be served. If two (2) or more parties or persons file

identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons required to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties and the agency. (3-20-20)T

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 made available for cross-examination and otherwise participate in the hearing, at the discretion of the presiding officer, in the same manner as a party. (3-20-20)T

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: (3-20-20)T

a. Natural Person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, or family member, or by a next friend if the person lacks full legal capacity to act for himself or herself. (3-20-20)T

b. A partnership may be represented by a partner, duly authorized employee, or attorney. (3-20-20)T

c. A corporation may be represented by an officer, duly authorized employee, or attorney. (3-20-20)T

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (3-20-20)T

e. A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

204. WITHDRAWAL OF PARTIES (RULE 204).
Any party may withdraw from a proceeding in writing or at hearing. (3-20-20)T

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. (3-20-20)T

206. CONDUCT REQUIRED (RULE 206).
Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. Smoking is not permitted at hearings. (3-20-20)T

207. -- 209. (RESERVED)

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. (3-20-20)T

211. -- 219. (RESERVED)

220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).
All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." All pleadings must be submitted on Department approved forms if available. Applications or claims or appeals not submitted on Department approved forms should: (3-20-20)T

01. Facts. Fully state the facts upon which they are based. (3-20-20)T

02. Refer to Provisions. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based. (3-20-20)T

03. Other. State the right, license, award, or authority sought. (3-20-20)T

221. -- 229. (RESERVED)

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

01. Pleadings Defined. All pleadings requesting the following are called "petitions:" (3-20-20)T

a. Modification, amendment or stay of existing orders or rules; (3-20-20)T

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; (3-20-20)T

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; (3-20-20)T

d. Rehearing; or (3-20-20)T

e. Intervention. (3-20-20)T

02. Petitions. Petitions should: (3-20-20)T

a. Fully state the facts upon which they are based; (3-20-20)T

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; (3-20-20)T

c. State the relief desired; and (3-20-20)T

d. State the name of the person petitioned against (the respondent), if any. (3-20-20)T

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." (3-20-20)T

02. Form and Contents. Complaints must: (3-20-20)T

a. Be in writing; (3-20-20)T

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; (3-20-20)T

c. Refer to statutes, rules, orders or other controlling law involved; (3-20-20)T

d. State the relief desired; (3-20-20)T

e. State the name of the person complained against (the respondent). (3-20-20)T

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." (3-20-20)T

02. Form and Contents. Protests should: (3-20-20)T

a. Fully state the facts upon which they are based, including the protestant's claim of right to oppose the application or claim; (3-20-20)T

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (3-20-20)T

c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. (3-20-20)T

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." (3-20-20)T

02. Form and Contents. Motions should: (3-20-20)T

a. Fully state the facts upon which they are based; (3-20-20)T

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and (3-20-20)T

c. State the relief sought. (3-20-20)T

03. Other. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit 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. (3-20-20)T

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, or motions are called "answers." (3-20-20)T

01. Answers to Pleadings Other than Motions. Answers to applications, claims, appeals, complaints, or petitions when required to be filed by provision of statute, rule, or order 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, complaints, or petitions, must admit or deny each material allegation of the applications or claims, complaint, or petition. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. This rule does not prevent a party from filing a responsive pleading in instances not required under these rules. (3-20-20)T

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 within fourteen (14) days of the filing of the motion. The time to file an answer to a motion may be enlarged or shortened by the presiding officer upon a showing of good cause by a party. The presiding officer may act upon a prehearing motion under Rule 565. (3-20-20)T

271. -- 279. (RESERVED)

280. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS (RULE 280).
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. (3-20-20)T

01. Requirements. Consent agreements must: (3-20-20)T

a. Recite the parties to the agreement; and (3-20-20)T

b. Fully state the conduct proscribed or prescribed by the consent agreement. (3-20-20)T

02. Additional. In addition, consent agreements may: (3-20-20)T

a. Recite the consequences of failure to abide by the consent agreement; (3-20-20)T

b. Provide for payment of civil or administrative penalties authorized by law; (3-20-20)T

c. Provide for loss of rights, licenses, awards or authority; (3-20-20)T

d. Provide for other consequences as agreed to by the parties; and (3-20-20)T

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (3-20-20)T

281. -- 299. (RESERVED)

300. FILING DOCUMENTS WITH THE AGENCY -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) -- ELECTRONICALLY SIGNED DOCUMENTS (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). Whenever any document is filed by FAX, the original must be mailed by United States mail or physically delivered to the agency the next working day. A document required to be accompanied by a filing fee shall not be filed with the agency until the fee is received. There shall be no limit as to the number of pages of a facsimile copy which was not transmitted directly to the agency by the facsimile machine process. The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. (3-20-20)T

301. FORM OF PLEADINGS (RULE 301).

01. Pleadings. All pleadings, except those on agency forms, submitted by a party and intended to be part of an agency record should: (3-20-20)T

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; (3-20-20)T

b. State the case caption, case number, if applicable, and title of the document; (3-20-20)T

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 (3-20-20)T

d. Have at least one inch (1") left and top margins. (3-20-20)T

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

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
FAX Number of Representative (if there is one)
Attorney/Representative for (Name of Party)

BEFORE THE AGENCY

(Title of Proceeding)	)	CASE NO.
	)	
	)	(TITLE OF DOCUMENT)
	)	

(3-20-20)T

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 filing the original with the officer designated by the agency to receive filings in the case. (3-20-20)T

303. PROOF OF SERVICE (RULE 303).
Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of, served the foregoing (name(s) of document(s) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).
(Signature) (3-20-20)T

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).
Defective, insufficient or late pleadings may be returned or dismissed. (3-20-20)T

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. (3-20-20)T

306. ELECTRONICALLY SIGNED COMMUNICATIONS (RULE 306).
The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. For an electronic signature to be valid for use by the Department, it must be created by a technology that is accepted for use by the Department. (3-20-20)T

307. CRITERIA FOR ACCEPTABLE ELECTRONIC SIGNATURE TECHNOLOGY (RULE 307).
For an electronic signature technology to be accepted for use by the Department, it must comply with the following criteria: (3-20-20)T

01. Statutory Criteria. An acceptable electronic signature technology must be capable of creating signatures that conform to the requirements set forth in Section 67-2354, Idaho Code: (3-20-20)T

a. It is unique to the person using it; (3-20-20)T

b. It is capable of verification; and (3-20-20)T

c. It conforms to the applicable rules promulgated by the Department pursuant to Section 67-2356, Idaho Code. (3-20-20)T

02. Additional Criteria. An electronic signature technology acceptable to the Department also must be capable of creating a signature that satisfies the following additional criteria: (3-20-20)T

a. It is under the sole control of the person using it; (3-20-20)T

b. It is linked to the data in such a manner that if the data are changed, the electronic signature is invalidated; and (3-20-20)T

c. It meets International Standards Organization ISO X.509 standard. (3-20-20)T

308. PUBLIC KEY CRYPTOGRAPHY (RULE 308).
The technology known as Public Key Cryptography is an accepted technology for use by the Department, provided that the electronic signature is created consistent with the provisions in these rules. (3-20-20)T

01. Terminology. For purposes of Rules 306 through 311, and unless the context expressly indicates otherwise, the following terms shall have the meanings here ascribed to them: (3-20-20)T

a. Approved certification authority. The Certification Authority authorized and accepted by the State of Idaho to issue certificates for electronic signature transactions involving the State; (3-20-20)T

b. Asymmetric cryptosystem. A computer algorithm or series of algorithms that utilize(s) two (2) different keys with the following characteristics: (3-20-20)T

i. Identifies the certification authority issuing it; (3-20-20)T

ii. One (1) key verifies a given message; and (3-20-20)T

iii. The keys have the property that, knowing one (1) key, it is computationally infeasible to discover the other key. (3-20-20)T

c. Certificate. A computer-based record that: (3-20-20)T

i. Identifies the certification authority issuing it; (3-20-20)T

ii. Names or identifies its subscriber; (3-20-20)T

iii. Contains the subscriber's public key; (3-20-20)T

iv. Is electronically signed by the Certification Authority issuing or amending it; and (3-20-20)T

v. Conforms to widely-used industry standards. (3-20-20)T

d. Certification authority. A person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate; (3-20-20)T

e. Electronic message. An electronic representation of information intended to serve as a written communication with the Department; (3-20-20)T

f. Electronically signed communication. A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message; (3-20-20)T

g. Key pair. A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify an electronic signature that the private key creates; (3-20-20)T

h. Private key. The key of a key pair used to create an electronic signature; (3-20-20)T

i. Proof of identification. The document or documents presented to a Certification Authority to establish the identity of a subscriber; (3-20-20)T

j. Public key. The key of a pair used to verify an electronic signature; (3-20-20)T

k. Subscriber. A person who: (3-20-20)T

i. Is the subject listed in a certificate; (3-20-20)T

ii. Accepts the certificate; and (3-20-20)T

iii. Holds a private key which corresponds to a public key listed in that certificate. (3-20-20)T

l. Technology. The computer hardware or software-based method or process used to create electronic signatures. (3-20-20)T

02. Electronic Signature to Be Unique. Section 67-2354, Idaho Code, requires that an electronic signature be "unique to the person using it." A public key-based electronic signature may be considered unique to the person using it if: (3-20-20)T

a. The private key used to create the signature on the document is known only to the signer; (3-20-20)T

b. The electronic signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer's private key; (3-20-20)T

c. Although not all electronically signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and (3-20-20)T

d. It is computationally infeasible to derive the private key from knowledge of the public key. (3-20-20)T

03. Signature Capable of Verification. Section 67-2354, Idaho Code, requires that an electronic signature be "capable of verification." A public-key based electronic signature is capable of verification: (3-20-20)T

a. If the acceptor of the electronically signed document can verify the document was electronically signed by using the signer's public key; (3-20-20)T

b. If a certificate is a required component of a transaction, the certificate was valid; and (3-20-20)T

c. If a certificate is a required component of a transaction, the issuing Certification Authority identifies which, if any, form(s) of proof of identification it required of the signer prior to issuing the certificate. (3-20-20)T

04. Electronic Signature Must Meet ISO X.509 Standards. The electronic signature must meet International Standards Organization ISO X.509 standards. (3-20-20)T

05. Approved Certification Authority. The Department shall only accept certificates from an Approved Certification Authority. (3-20-20)T

309. CRITERIA FOR ACCEPTING AN ELECTRONIC SIGNATURE (RULE 309).
The following criteria shall be used in determining the acceptability of electronic signatures: (3-20-20)T

01. Level of Security Used to Identify the Signer. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted. (3-20-20)T

02. Level of Security Used to Transmit the Signature. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to transmit the signature is sufficient for the transaction being conducted. (3-20-20)T

03. Certificate Format Used by the Signer. If a certificate is a required component of an electronic signature transaction, the Department shall ensure that the certificate format used by the signer is sufficient for the security and interoperability needs of the Department. (3-20-20)T

310. RETENTION OF CERTIFICATES (RULE 310).
All electronically signed messages received by the Department in accordance with this rule, as well as any information resources necessary to permit access to the message and to verify the electronic signature, shall be retained by the Department as necessary to comply with applicable law pertaining to records retention requirements for that message. (3-20-20)T

311. ELECTRONIC SIGNATURE REPUDIATION (RULE 311).
It is the responsibility of the rightful holder of the private key to maintain the private key's security. Repudiation of an electronically signed and transmitted message may only occur by the determination of a court of competent jurisdiction that the private key of the rightful holder was compromised through no fault of the rightful holder and without knowledge on the part of the rightful holder. It is the legal prerequisite for a claim of repudiation that the repudiator have filed a notice of revocation with the Certification Authority prior to making the claim of repudiation. (3-20-20)T

312. -- 349. (RESERVED)

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, if a formal hearing is required by statute to be held in the proceeding. (3-20-20)T

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. (3-20-20)T

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 by the date of the 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. (3-20-20)T

353. GRANTING PETITIONS TO INTERVENE (RULE 353).
If a timely-filed 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, unless the applicant's interest is adequately represented by existing parties. 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. (3-20-20)T

354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).
No order granting a petition to intervene will be acted upon sooner than seven (7) days after its filing, except in a hearing in which any party may be heard or except where no objection to the intervention is made. 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. (3-20-20)T

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 557 and 559, 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 analysis or detailed exhibits must comply with Rule 528 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. A person intending to present public witness testimony shall provide five (5) days notice prior to the hearing. The notice shall include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public testimony will be allowed only at the discretion of the presiding officer upon a finding of good cause. (3-20-20)T

356. -- 399. (RESERVED)

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. (3-20-20)T

01. **Form**. The petition shall: (3-20-20)T

a. Identify the petitioner and state the petitioner's interest in the matter; (3-20-20)T

b. State the declaratory ruling that the petitioner seeks; and (3-20-20)T

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (3-20-20)T

02. **Legal Assertions**. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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: (3-20-20)T

a. This is a final agency action issuing a declaratory ruling. (3-20-20)T

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: (3-20-20)T

i. A hearing was held; (3-20-20)T

ii. The declaratory ruling was issued; (3-20-20)T

iii. The party appealing resides; or (3-20-20)T

iv. The real property or personal property that was the subject of the declaratory ruling is located. (3-20-20)T

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. (3-20-20)T

403. -- 409. (RESERVED)

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. (3-20-20)T

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. (3-20-20)T

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).
Pursuant to Section 67-5252, Idaho Code hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, 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 74-404 and 67-5252(4), Idaho Code. (3-20-20)T

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

The scope of hearing officers' authority may be restricted in the appointment by the agency. (3-20-20)T

01. **Scope of Authority**. Unless the agency otherwise provides hearing, officers have the standard scope of authority, which is: (3-20-20)T

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of default, of prehearing conference and of hearing, or to provide for the use of informal procedure, as appropriate; (3-20-20)T

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; (3-20-20)T

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, rule on dispositive motions upon completion of the applicant's or petitioner's case in chief, and otherwise oversee the orderly presentations of the parties at hearing; and (3-20-20)T

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, following the submission of evidence through stipulation of the parties, affidavits, exhibits, or hearing testimony. (3-20-20)T

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 in Rule Subsection 413.01.c. (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers can be given authority with regard to the agency's rules as provided in Rule 416. (3-20-20)T

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 (1) officer sits at hearing, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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. A party to a contested agency proceeding shall not communicate directly or indirectly with the presiding officer or the agency head regarding any substantive issue in the contested case. When a presiding officer or

the agency head becomes aware of an ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer or agency head shall place a copy or written summary of the communication in the file for the case and order the party providing the communication to serve a copy of the communication or written summary upon all parties of record. Repeated violations of this rule shall be cause for the presiding officer to dismiss an action or to dismiss a party from an action. Written communications from a party showing service upon all other parties are not ex parte communications. (3-20-20)T

418. -- 499. (RESERVED)

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, fact finding, mini-trials, 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, for example, 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. (3-20-20)T

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. (3-20-20)T

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 is required by court order, statute or agency rule to be make public. (3-20-20)T

503. -- 509. (RESERVED)

510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).
The presiding officer, or an authorized employee of the agency, may by order or notice issued to all parties convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).
The presiding officer, or an authorized employee of the agency, 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. (3-20-20)T

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. (3-20-20)T

515. -- 519. (RESERVED)

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

01. Kinds of Discovery. The kinds of discovery recognized and authorized by these rules in contested cases are: (3-20-20)T

a. Depositions; (3-20-20)T

b. Production requests or written interrogatories; (3-20-20)T

c. Requests for admission; (3-20-20)T

d. Subpoenas; and (3-20-20)T

e. Statutory inspection, examination (including physical or mental examination), investigation, etc. (3-20-20)T

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, 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)). (3-20-20)T

521. WHEN DISCOVERY AUTHORIZED (RULE 521).
No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery in a manner consistent with the provisions of Rule 37(a) 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 authorize discovery. (3-20-20)T

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).
All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 521 and to the authorizing statutes and rules. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (3-20-20)T

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. (3-20-20)T

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).
Production requests or written interrogatories and requests for admission 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. (3-20-20)T

525. SUBPOENAS (RULE 525).
The agency may issue subpoenas 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. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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 authorizing discovery. (3-20-20)T

529. EXHIBIT NUMBERS (RULE 529).
The agency assigns exhibit numbers to each party. (3-20-20)T

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. (3-20-20)T

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, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure. (3-20-20)T

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. (3-20-20)T

533. -- 549. (RESERVED)

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. (3-20-20)T

551. FACILITIES AT OR FOR HEARING AND A.D.A. 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 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. (3-20-20)T

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. (3-20-20)T

553. CONDUCT AT HEARINGS (RULE 553).
All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. The presiding officer may exclude persons from the hearing who refuse to conduct themselves in a respectful manner. Disruptive conduct that is serious in nature shall be cause for dismissal of a disrupting party from the proceeding. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

558. ORDER OF PROCEDURE (RULE 558).
The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

561. CONTINUANCE OF HEARING (RULE 561).
The presiding officer may continue proceedings for further hearing. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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 and ask the parties for comment upon the proposed order. (3-20-20)T

565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).
The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. Unless otherwise provided by the presiding officer upon a showing of good cause by a party, when a motion has been filed, all parties joining in, answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the motion in which to respond. (3-20-20)T

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. (3-20-20)T

567. -- 599. (RESERVED)

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).
Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

603. DEPOSITIONS (RULE 603).
Depositions may be offered into evidence. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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 that 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 approval of the presiding officer prior to the hearing. (3-20-20)T

607. -- 609. (RESERVED)

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. (3-20-20)T

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. (3-20-20)T

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 could 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 (1) 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. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

615. -- 649. (RESERVED)

650. RECORD FOR DECISION (RULE 650).

01. Official Record. The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. (3-20-20)T

02. Contents of Record. The record for a contested case shall include: (3-20-20)T

a. All notices of proceedings; (3-20-20)T

b. All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (3-20-20)T

c. All intermediate or interlocutory rulings of hearing officers or the agency head; (3-20-20)T

d. All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (3-20-20)T

e. All offers of proof, however made; (3-20-20)T

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; (3-20-20)T

g. All evidentiary rulings on testimony, exhibits, or offers of proof; (3-20-20)T

h. All staff memoranda or data submitted in connection with the consideration of the proceeding; (3-20-20)T

i. A statement of matters officially noticed; and (3-20-20)T

j. All recommended orders, preliminary orders, final orders, and orders on reconsideration. (3-20-20)T

651. RECORDING OF HEARINGS (RULE 651).
All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a transcript without charge. (3-20-20)T

652. -- 699. (RESERVED)

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (RULE 700).
If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, 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 or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (3-20-20)T

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. (3-20-20)T

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 (7) 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. Costs may be assessed against a defaulting party. (3-20-20)T

703. -- 709. (RESERVED)

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 (1) 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. (3-20-20)T

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. (3-20-20)T

712. CONTENTS OF ORDERS (RULE 712).
Pursuant to Section 67-5248, Idaho Code, an order that determines the legal rights or interests of one (1) or more parties must be in writing and shall include the following: (3-20-20)T

01. Findings of Fact and Conclusions of Law. An order shall contain a reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding. (3-20-20)T

02. Statement of Available Procedure. An order shall contain a statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief. (3-20-20)T

713. -- 719. (RESERVED)

720. RECOMMENDED ORDERS (RULE 720).

01. Recommended Orders -- 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. (3-20-20)T

02. Contents of Recommended Orders. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-20-20)T

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. (3-20-20)T

b. Within fourteen (14) 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 with the agency head or designee on any issue in the proceeding. If no party files exceptions to the recommended order with the agency head or designee, the agency head or designee will issue a final order within fifty-six (56) days after: (3-20-20)T

i. The last day a timely petition for reconsideration could have been filed with the hearing officer; (3-20-20)T

ii. The service date of a denial of a petition for reconsideration by the hearing officer; or (3-20-20)T

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer. (3-20-20)T

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 fourteen (14) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-20-20)T

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS (RULE 730).

01. Preliminary Orders -- 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. (3-20-20)T

02. Contents of Preliminary Order. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-20-20)T

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 petition 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. (3-20-20)T

b. Within fourteen (14) days after: (3-20-20)T

i. The service date of this preliminary order; (3-20-20)T

ii. The service date of the denial of a petition for reconsideration from this preliminary order; or (3-20-20)T

iii. 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. (3-20-20)T

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) 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. (3-20-20)T

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. (3-20-20)T

e. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. (3-20-20)T

f. 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: (3-20-20)T

i. A hearing was held; (3-20-20)T

ii. The final agency action was taken; (3-20-20)T

iii. The party seeking review of the order resides; or (3-20-20)T

iv. The real property or personal property that was the subject of the agency action is located. (3-20-20)T

g. 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. (3-20-20)T

731. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Final Order -- 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, or emergency orders, including cease and desist or show cause orders, issued by the agency head pursuant to Section 67-5247, Idaho Code. (3-20-20)T

02. Content of Final Order. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-20-20)T

a. This is a final order of the agency. Any party may file a petition 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. (3-20-20)T

b. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for

contesting the action by the director and requesting a hearing. (3-20-20)T

c. 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: (3-20-20)T

i. A hearing was held; (3-20-20)T

ii. The final agency action was taken; (3-20-20)T

iii. The party seeking review of the order resides; or (3-20-20)T

iv. The real property or personal property that was the subject of the agency action is located. (3-20-20)T

d. 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, and Rule 84 of the Idaho Rules of Civil Procedure. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (3-20-20)T

741. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).
If an order does not designate itself 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. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

781. -- 789. (RESERVED)

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. (3-20-20)T

791. NOTICE OF APPEAL (RULE 791).
The notice of appeal must be filed with the district court and served on the agency and all parties. (3-20-20)T

01. Filing Appeal. Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the district court of the county in which: (3-20-20)T

a. The hearing was held; (3-20-20)T

b. The final agency action was taken; (3-20-20)T

c. The party seeking review of the agency action resides; or (3-20-20)T

d. The real property or personal property that was the subject of the agency is located. (3-20-20)T

02. Filing Deadline. Pursuant to Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: (3-20-20)T

a. Of the service date of the final order; (3-20-20)T

b. Of the denial of the petition for reconsideration; or (3-20-20)T

c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (3-20-20)T

792. -- 999. (RESERVED)

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