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**IDAPA 41
TITLE 08
CHAPTER 01**

41.08.01 - APPEAL FROM ADMINISTRATIVE DECISION AND REQUEST FOR HEARING

000. LEGAL AUTHORITY.

Title 39, Chapter 4 and Title 39, Chapter 36, Idaho Code, grants authority to Public Health Districts to adopt rules, regulations and standards to protect the environment and health of the Public Health Districts. (7-1-98)

001. TITLE AND SCOPE.

01. Title. These rules shall be known as Public Health District, "Appeal from Administrative Decision and Request for Hearing," IDAPA 41.08.01. (7-1-98)

02. Scope. The provisions of these rules establish the procedure for appeal from administrative decision and request for hearing. (7-1-98)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter. (7-1-98)

003. DEFINITIONS.

01. Board Of Health. Means the Board of Health for Public Health Districts 2, 3, 4, 5, 6, and 7. (7-1-98)

02. District Director. Means the District Director of Public Health Districts 2, 3, 4, 5, 6, and 7. (7-1-98)

03. District Health Department. Means the jurisdictional public health district as defined in Section 39-408, Idaho Code. (7-1-98)

04. Division Director. Means any of the Division Directors for Public Health Districts 2, 3, 4, 5, 6, and 7. (7-1-98)

05. Record. Means the Hearing Record as cited in IDAPA 16, Title 05, Chapter 03, Subsection 100.08. The Board, Director, or Hearing Officer and the Hearing Coordinator must arrange for a record to be made of the contested case hearing. The record must be a verbatim record and it shall be magnetically recorded by two (2) recording devices, unless a Party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record shall be transcribed at the expense of the Party requesting a transcription and prepayment or guarantee of payment may be required. Once a transcription is requested, any Party may obtain a copy at the Party's own expense. The recorded proceedings will be provided to the Hearings Coordinator for inclusion into the record. The Department shall maintain an official record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. The record shall include all notices of proceedings, pleadings, motions, briefs, petitions and intermediate rulings, evidence received or considered, any oral or written statements allowed by the hearing officer, statement of matters officially noticed, offers of proof and objections and rulings thereon, the recording of the proceedings or any transcript of all or part of the proceedings, staff memoranda or data submitted to the hearing authority in connection with the proceedings, and any recommended order, preliminary order, final order or order on reconsideration. (7-1-98)

06. Staff Member. Means any of the staff members of Public Health Districts 2, 3, 4, 5, 6, and 7. (7-1-98)

07. Supervisor. Means any of the supervisors of Public Health Districts 2, 3, 4, 5, 6, and 7. (7-1-98)

004. APPLICABILITY.

These rules are applicable to the citizens and district health departments of Public Health Districts 2, 3, 4, 5, 6, and 7.

(7-1-98)

005. -- 010. (RESERVED)

011. APPEAL OF STAFF MEMBER DECISION.

01. Citizen Appeal. Any citizen aggrieved by a decision made by a staff member of the District Health Department may submit an administrative appeal to the District Health Department supervisor for review. (7-1-98)

02. Limitation of Time Periods. The individual program rules for time limitations within which certain actions must be taken or documents filed shall be followed. In the event there is no provision in the Idaho Code or other specific rule, a party shall have thirty-five (35) days from the receipt of an adverse order or notice of decision to file an appeal of any adverse order or notice of decision. (7-1-98)

03. Format for Appeal. All administrative appeals shall be made in writing, and shall contain the following information: (7-1-98)

a. The nature of the decision upon which the appeal is brought, including the code, ordinance, rule, or policy cited by the Staff Member to support the decision. (7-1-98)

b. The ruling or decision desired by the appellant. (7-1-98)

c. A statement identifying the code, ordinance, rule, or policy which supports the citizen's position. (7-1-98)

d. The reason(s) why the citizen believes the code, ordinance, rule or policy has been misapplied. (7-1-98)

012. BASIS FOR APPEAL OF STAFF MEMBER DECISION.

01. Supervisor or Division Director Role. Each appeal request shall be submitted to a supervisor or Division Director who shall determine whether the issue raised is tied to application of a statute, policy, or rule administered by the District Health Department, or whether the issue involves the substance of any statute, policy or rule. (7-1-98)

02. Criteria for Appeal. An appeal is appropriate only in the instance of alleged misapplication of a state or health district statute, rule or policy. (7-1-98)

013. PROCEDURE FOR APPEAL OF STAFF MEMBER DECISION.

01. Hearing Schedule. Within five (5) days of receipt of an administrative appeal, the staff member whose decision is being appealed shall assist the citizen to schedule a hearing before the supervisor or Division Director as soon as the appeal can be accommodated. (7-1-98)

02. Fee. No fee shall be charged to any appeal applicant whose case shall be brought before the supervisor or Division Director. (7-1-98)

03. Staff Member Representation. The staff member whose decision has been challenged shall be present. (7-1-98)

04. Length of Presentations. Presentations shall be limited to ten (10) minutes for each citizen and ten (10) minutes for the staff member, unless extraordinary circumstances require otherwise as determined by the supervisor or Division Director. (7-1-98)

05. Reports. The staff member or citizen may submit a written explanation for the supervisor's or Division Director's consideration prior to the start of the hearing. A copy of any staff member explanation shall be provided to the citizen at the time it is prepared for presentation to the supervisor or Division Director. (7-1-98)

014. REVIEW BY THE SUPERVISOR OR DIVISION DIRECTOR.

01. Decision. Within five (5) days after hearing the request of a citizen, the supervisor or Division Director shall affirm the staff member's decision, reverse the decision, or affirm the decision conditionally. (7-1-98)

02. Format. The decision in any such appeal shall be made in writing and shall set forth the reasons thereof. (7-1-98)

015. APPEAL OF THE SUPERVISOR'S OR DIVISION DIRECTOR'S DECISION.

01. District Director Role. An appeal of the supervisor's or Division Director's decision may be taken to the District Director of the District Health Department, solely upon the record compiled in accordance with this procedure. (7-1-98)

02. Format. Said appeal may be accompanied by a written explanation of the basis for appeal, not exceeding two (2) typewritten pages. (7-1-98)

03. Options. The District Director may request more information or may schedule oral presentations, if desired. (7-1-98)

016. REVIEW BY THE DISTRICT DIRECTOR.

01. Decision. Within five (5) days after reviewing the request of a citizen, the District Director shall affirm the supervisor's or Division Director's decision, reverse the decision, or affirm the decision conditionally. (7-1-98)

02. Format. The District Director's decision in any such appeal shall be made in writing and shall set forth the reasons thereof. (7-1-98)

017. APPEAL OF THE DISTRICT DIRECTOR'S DECISION.

01. Board of Health Role. An appeal of the District Director's decision may be taken to the Board of Health of the District Health Department, solely upon the record compiled in accordance with this procedure. (7-1-98)

02. Format. Said appeal may be accompanied by a written explanation of the basis for appeal, not exceeding two (2) typewritten pages. (7-1-98)

03. Options. The Board may request more information or may schedule oral presentations, if desired. (7-1-98)

04. Final Agency Appeal. The Board of Health's decision shall be final in matters subject to the appeal procedure outlined herein. (7-1-98)

018. REVIEW BY THE BOARD OF HEALTH.

01. Board of Health Decision. After reviewing the request of a citizen at the next scheduled board meeting after the request is received, within five (5) days the Board of Health shall affirm the District Director's decision, reverse the decision, or affirm the decision conditionally. (7-1-98)

02. Format. The Board of Health decision in any such appeal shall be made in writing and shall set forth the reasons thereof. (7-1-98)

03. Further Appeal. Further appeal outside the agency may be authorized by provisions of Idaho code and IDAPA. (7-1-98)

019. -- 999. (RESERVED)

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