

<u>Code Section Affected</u>	<u>Action Taken</u>	<u>Changes to Existing APA</u>
67-5201	Revises and adds definitions	<p>Definitions include:</p> <p>"Contested case" definition revised to mean an adjudication arising out of an agency order or failure to issue an agency order, from which an opportunity for an evidentiary hearing is required by the federal constitution, a federal statute or the constitution or a statute of this state. "Contested case" shall not mean a proceeding by the public utilities commission, the industrial commission, the Idaho department of water resources or another agency for which an alternative adjudication process is provided by statute.</p> <p>"Final order" is defined as (a) a contested case order that is final, (b) a final order after agency head review pursuant to section 67-5254, Idaho Code, or (c) a declaratory ruling order that is final and subject to judicial review.</p> <p>The definition of "order" includes the following exception: The granting of an application for a license that is unconditional in respect to the license requested, and that does not affect the rights of a third party which may have a right to commence a contested case, is not an order.</p> <p>"Preliminary review" is defined as the receipt, collection, processing, and analyzing of information, or other activity of an agency preparatory to the making of an agency decision. ("Agency decision" is defined as an agency action excluding rulemaking.)</p>

67-5240	Repealed	This section defined a “contested case” which is now defined in 67-5201
67-5241	Revised	<p>Distinguishes between informal disposition that occurs before a request for contested case proceeding is filed which is not considered a contested case and does not result in a contested case order; and informal disposition that occurs after a request for a contested case proceeding which is considered a contested case and which does result in a contested case order.</p> <p>Existing APA – has provisions regarding evidence in contested cases which has now been incorporated into 67-5244.</p>
67-5242 through 67-5254, 67-5270, 67-5271, and 67-5273 through 67-5279	Repealed	Replaced by new language described below
67-5242 (new)	New section	<p>This is a new provision that distinguishes preliminary reviews and provides that the provisions of the act do not apply to an agency's preliminary review until an order is issued, not issued within the time required by law, or the agency fails to perform a duty required by law.</p> <p>Existing APA: Provides for recommended orders and preliminary orders and for agency head reviews of both types prior to issuance by the agency head of a final order.</p>
67-5243 (new)	New section	<p>This section provides for commencement of a contested case. The agency has to give notice to a person when it has made a decision that would entitle the person to initiate a contested case proceeding. The person then has 28 days to file a request for a contested case proceeding with the agency (who then has to send it to the office of administrative hearings within 7 days) or directly with the office of administrative hearings. The office of administrative hearings has 7 days to</p>

		<p>send a notice to the parties that the matter is considered commenced and setting forth information as provided in the statute.</p> <p>Existing APA: No similar provision.</p>
67-5244 (new)	New section	<p>Sets forth contested case procedures. Covers procedures for the hearing officer and guidelines regarding the conduct of hearings. Requires a hearing record.</p> <p>Existing APA: Provides for procedures at hearing. Requires notice be given to the parties, requires full disclosure of relevant information, allows opportunity to respond and present evidence and argument, allows nonparties an opportunity to present a statement and requires the hearing to be recorded. Provides for default.</p>
67-5245 (new)	New section	<p>Provides for evidence in contested cases. Provides the types of evidence that may be introduced and excluded. Provides that under certain circumstances, the hearing officer may take judicial notice.</p> <p>Existing APA: Similar provisions</p>
67-5246 (new)	New section	<p>Requires the office of administrative hearings to maintain a hearing record for 6 months. Requirements are also set forth designating what the record must contain including a recording of each proceeding. Provides that the record constitutes the exclusive basis for hearing officer action in a contested case.</p> <p>Existing APA: Similar provisions.</p>
67-5247 (new)	New section	<p>Emergency adjudication procedures. Agencies can take action and issue orders to address an immediate danger to the public health or safety. Shall take only such action as is necessary to prevent or avoid the immediate danger to public health or safety. Notice and opportunity to be heard if practicable. Within 7 days of the order notice has to be sent to the affected person. Within 30 days the</p>

		<p>agency has to provide notice and an opportunity for hearing on the issues underlying the order. If an objection is received from the affected person it shall be treated as a request for a contested case proceeding. An order is only effective for 120 days unless the hearing officer finds good cause to extend it.</p> <p>Existing APA: There is no provision allowing for objection that would then be treated as a request for a contested case proceeding.</p>
67-5248 (new)	New section	<p>Allows ex parte communication when authorized by statute or concerns an uncontested procedural issue. Also states the actions that must be taken by the hearing officer if he participates in ex parte communication and provides that the hearing officer may, under certain conditions, be disqualified..</p> <p>Existing APA: States only that a presiding officer shall not have communications except upon notice and opportunity for all parties to participate.</p>
67-5250 (new)	New section	<p>A hearing officer may issue subpoenas for witnesses and for the production of evidence.</p> <p>Existing APA: No provisions on subpoenas.</p>
67-5251 (new)	New section	<p>Provisions on discovery include allowing a party to obtain names of witnesses and a right to inspect and copy materials used as evidence. A party must also supplement discovery requests when new information arises. Parties may also petition for a protective order for certain materials.</p> <p>Existing APA: No provisions on discovery.</p>
Section 67-5252	New Section	<p>Provides for default orders. Authorizes the hearing officer to conduct further proceedings to complete the adjudication without the defaulting party. Provides that an order issued against a defaulting</p>

		<p>party may be based on defaulting party's admissions without notice to the defaulting party and that if the burden of proof is on the defaulting party, the hearing officer may issue a contested case order without taking evidence. Within sixty days after notice to the defaulting party that contested case order has been issued, the party may petition to vacate the order. If good cause for failure to appear, the hearing officer shall vacate the decision and conduct another evidentiary hearing. If good cause is not shown the motion to vacate shall be denied.</p> <p>Existing APA: If a party fails to attend at any stage, the presiding officer may serve a notice of proposed default. Within 7 days after service the party against whom it was issued may file a petition for the proposed order to be vacated. The presiding officer shall issue or vacate the order after the time for filing the petition has passed and conduct any further proceedings necessary to complete the matter without participation of the defaulting party.</p>
Section 67-5253	New Section	Hearing officers issue contested case orders that become final 28 days after issuance unless reviewed by the agency head or unless a request for reconsideration is filed. The orders have to be served within 60 days after the hearing ends, the record closes or memoranda, briefs or proposed findings are submitted. Contested case orders have to state findings of fact and conclusions of law. The hearing officer may allow a party to submit proposed findings. The order is effective 28 days after its service date unless there is agency head review or reconsideration is granted. The hearing officer shall attach

		<p>available procedures and time limits for seeking reconsideration and judicial review.</p> <p>Existing APA: If the presiding officer is not the agency head they shall issue either a recommended order, which becomes final only after review by the agency head or a preliminary order, which becomes final unless reviewed by the agency head.</p>
Section 67-5254	New Section	<p>Agency heads may review contested case orders. Agencies have to give notice to the parties and the office of administrative hearings that it intends to review the order. Within 28 days of service of a contested case order, a party may request an agency head to review a contested case order before the order becomes final. If a party and agency do not request agency head review within the prescribed time, the order becomes final. If a party files a request for reconsideration, the hearing officer shall decide that first. If the agency head reviews a contested case order, they shall not modify findings of fact. The agency head shall issue a final order disposing of a proceeding following its review, not later than 60 days after notice to review the contested case order was filed with the office of administrative hearings. A final order has to identify how the order differs from the contested case order and state the law that supports any such difference. The order shall be filed with the office of administrative hearings and shall be final upon filing. Notice shall be provided to the parties.</p> <p>Existing APA: Agency heads may upon their own motion or motion by any party review preliminary orders. Petitions have to be filed within 14 days after the service date of the preliminary order. If</p>

		<p>the agency head decides to review the order they have to give written notice within 14 days of issuance of the order. The time periods are tolled by the filing of a petition for reconsideration. Agency head shall allow all parties to file exceptions to the preliminary order, present briefs and may allow all parties to participate in oral argument. Final order in writing shall issue within 56 days of receipt of final briefs or oral argument. The agency head may also remand the matter.</p> <p>If presiding officer is agency head, they issue final orders. If not, they review the recommended order and issue a final order. If the presiding officer issued a preliminary order, it will become final unless reviewed by the agency head who then issues a final order. Parties may file motions for reconsideration within 14 days of the service date of the order. The petition is deemed denied if not disposed of within 21 days of filing. Final orders are effective within 14 days of service if no petition for reconsideration is filed.</p>
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Section 67-5256	New Section	Parties may file requests for reconsideration with the office of administrative hearings not later than 14 days after service of a contested case order. Time for judicial review does not begin to run until the hearing officer disposes of the request for reconsideration. Not later than 21 days after a request is filed, the hearing officer shall deny the request, grant the request and modify the contested case order or grant the request and set the matter for further proceedings. If the hearing officer fails to act within 28 days of the request being filed, it is deemed denied.
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		Existing APA – Petitions may be filed within 14 days of service of the order. If the presiding officer doesn't dispose of the petition within 21 days of filing it is deemed denied.
Section 67-5257	New Section	Provides that not later than 7 days after the service date of a final order a party may request the agency to stay the order pending judicial review and the agency may grant or deny the stay. Existing APA – Filing a petition for review itself doesn't stay the effectiveness or enforcement of the agency action. The agency or reviewing court may grant a stay.
Section 67-5258	New Section	Agencies shall index all final orders in contested cases and make the same available for public inspection and copying at cost. However, any final orders that are made confidential and not subject to disclosure are exempt from indexing. Agencies may not rely on final orders as precedent unless an agency designates an order as such, indexes the order and makes it available for public inspection. Agencies shall index public guidance documents and make the same available for inspection and copying at cost. Defines “agency guidance.” Provides that indexing of guidance documents do not give them the force and effect of law or precedential authority. Existing APA – all final orders shall be indexed unless otherwise prohibited if the agency intends to rely on it as precedent. Available for public inspection. Agency guidance shall be indexed.

Section 67-5259	New Section	<p>If licensees make timely application for renewal or issuance of a new license for an activity of a continuing nature, the existing license won't expire until the agency takes final action on the application, or if the application is denied or new license is limited, until the last day for seeking review of the agency order or a later date as may be set by a reviewing court. Revocations, suspensions, annulments or withdrawals of licenses shall not be lawful unless the agency first notifies the licensee of facts or conduct that warrants the action and the licensee is given an opportunity to show compliance. If an agency determines there is immediate danger to public health or safety, emergency action and summary suspension may be taken pending prompt proceedings for revocation or other action. Any revocation, suspension, annulment or withdrawal that is in conflict with these provisions is null and void.</p> <p>Existing APA: Agencies shall not revoke, suspend, modify, annul, withdraw or amend a license or refuse to renew a license if timely application has been made – without giving notice and opportunity for hearing. Agencies can take immediate action to protect the public interest.</p>
Section 67-5260	New Section	<p>Defines "final agency action." Unless limited or precluded by other law a person who meets requirements of this section is entitled to judicial review of a final agency action. Under certain circumstances a person may be entitled to judicial review of an agency action that is not final. Courts may compel agencies to take action if action is unlawfully withheld or unreasonably delayed.</p> <p>Existing APA: Persons aggrieved by agency actions or final orders are entitled to judicial review once they have exhausted administrative remedies in chapter 52, title 67. A preliminary,</p>

		procedural or intermediate agency action or ruling is reviewable if review of the final action would not provide an adequate remedy.
Section 67-5262	New Section	<p>Petitions to review agency rules may be filed any time except as limited by specified law. Petitions for review of final orders must be filed within 28 days of service of the order or, if reconsideration is sought, within 28 days of the decision thereon. Cross-petitions for judicial review may be filed within 14 days after service of the notice of petition for judicial review. Petitions for judicial review of other agency actions must be filed within 28 days of the action. Times may be extended during pendency of attempts to exhaust administrative remedies. Times are tolled during any time a party pursues administrative remedy before the agency which must be exhausted as a condition of judicial review. Parties may not petition for judicial review while seeking reconsideration.</p> <p>Existing APA: Need to file within 28 days of service of the final order or date the preliminary order becomes final or within 28 days of a decision on reconsideration.</p>
Section 67-5263	New Section	<p>Petitions for judicial review do not automatically stay agency decisions. Parties may ask a court to stay the agency decision.</p> <p>Existing APA: Same as noted under Section 67-5257.</p>
Section 67-5264	New Section	<p>Provides that any party to a contested case has standing to obtain judicial review of a final order.</p> <p>Existing APA: same as reflected under 67-5260 above.</p>
Section 67-5265	New Section	A court may relieve a petitioner of the requirement of exhausting administrative

		<p>remedies if such remedies are inadequate or irreparable harm would result. Otherwise, petitioners must exhaust administrative remedies. Filing a petition for reconsideration or a stay of proceedings is not a prerequisite for seeking judicial review.</p> <p>Existing APA: same as reflected under 67-5260 above.</p>
Section 67-5266	New Section	<p>If a hearing officer was required to maintain an agency record during proceedings, the court review is confined to that record. If the hearing officer was not required to maintain a record, the record for review consists of the unprivileged materials that the hearing officer directly or indirectly considered or that were submitted for consideration. If the agency action was ministerial or was taken with a minimal or no administrative record, the court may receive evidence relating to the agency's basis for taking action. In some cases, the court may allow discovery. The court may also, under certain conditions, remand the matter to the hearing officer to take additional evidence and the hearing officer may modify its decision based on that new evidence.</p> <p>Existing APA: Within 42 days of service the agency shall transmit to the reviewing court the record.</p>
Section 67-5267	New Section	<p>Addresses the standard of review. The court shall affirm a final agency order unless the court finds that findings, inferences, conclusions or decisions are in violation of constitutional or statutory provisions, in excess of statutory authority, made upon unlawful procedure, not supported by substantial evidence on the record as a whole or arbitrary, capricious, or an abuse of discretion. The court shall affirm, modify or set aside the final agency order, in</p>

		<p>whole or in part, or remand for further proceedings as necessary.</p> <p>Existing APA: Court won't substitute its judgment for that of the agency as to questions of fact. Agency action will be affirmed unless unconstitutional, violates statutory law, made upon unlawful procedure or arbitrary, capricious or abuse of discretion or not supported by substantial evidence on the record.</p> <p>Agency actions shall be affirmed unless substantial rights of the appellant have been prejudiced.</p>
Section 67-5255 (renumbered to 67-5268)	Revised	Relates to declaratory rulings by agencies. Changes the word "petition" to "request" as it relates to a person asking an agency for a declaratory ruling. Strikes "A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter."
Section 67-5272 (renumbered to 67-5269)	Revised	Relates to venue associated with proceedings for review or declaratory judgment. Changes the word "petition" to "request" throughout.
Section 67-5270	(new)	Creates the Office of Administrative Hearings in the department of self-governing agencies. Sets forth powers and duties. Existing APA: nothing similar
Section 67-5271	(new)	Provides for the Chief Administrative Hearing Officer appointed by the Governor to serve a six year term. Multiple terms may be served. Provides for Qualifications, powers and duties and removal. Existing APA: nothing similar
Section 67-5272	(new)	Provides for additional powers and duties of the chief and all hearing officers such as complying with a code of conduct, being at least 30 years of age, a citizen of the U.S., a legal resident of Idaho for at least 2 years, in good standing as an

		active or judicial member of the Idaho State Bar for at least 2 years, have a license to practice law or been a member of the judiciary for at least 5 continuous years immediate preceding appointment, have not served in the executive branch of Idaho government for a period of 2 years preceding appointment and have not participated in any phase of a contested case on which he is serving as the hearing officer. Provides for the power to issue subpoenas, control the course of proceedings and conduct proceedings, etc., Existing APA: nothing similar
Section 67-5273	(new)	Provides for the compensation of hearing officers as determined by the chief and approved by the advisory council. Existing APA: nothing similar
Section 67-5274	(new)	Provides for the disqualification of hearing officers under specified conditions. Existing APA: nothing similar
Section 67-5275	(new)	Creates an advisory council consisting of 9 members to serve without compensation (but shall be reimbursed for necessary expenses). The council shall make recommendations to the chief regarding issues and procedures relating to the office's duties, rules, policies, code of conduct, hearing officer training, etc., Existing APA: nothing similar
Section 67-5276	(new)	Provides for the cooperation of agencies with the office of administrative hearings. Existing APA: nothing similar
Section 67-2601	Revised	Adds the office of administrative hearings under the department of self-governing agencies.
The last 20 pages or so are just renumbering and updating code references.		