

Dear Senators VICK, Johnson, Stennett, and
Representatives GIBBS, Lickley, Rubel:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Idaho Department of Water Resources:

IDAPA 37.01.01 - Rules of Procedure of the Idaho Department of Water Resources and Idaho Water
Resource Board (New Chapter, Fee Rule) - Proposed Rule (Docket No. 37-0101-2101).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/29/2021. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/26/2021.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: October 14, 2021

SUBJECT: Idaho Department of Water Resources

IDAPA 37.01.01 - Rules of Procedure of the Idaho Department of Water Resources and Idaho Water Resource Board (New Chapter, Fee Rule) - Proposed Rule (Docket No. 37-0101-2101)

Summary and Stated Reasons for the Rule

The Idaho Department of Water Resources submits notice of proposed rule at IDAPA 37.01.01 - Rules of Procedure of the Idaho Department of Water Resources and Idaho Water Resource Board. This is a new chapter and a fee rule. According to the department, the rule is promulgated based on the Governor's Executive Order No. 2020-01 which requires that every rule chapter effective on June 30, 2020, be reviewed by the agency that promulgated the rule. The commission states that this particular rule chapter is up for review this year.

The department states that the new chapter is approximately 30% shorter than the existing chapter of procedural rules as a result of both internal agency analysis and external stakeholder negotiation, commentary, and editing. The department notes that obsolete provisions have been removed as well as Idaho Administrative Procedures Act provisions inapplicable to contested cases before the agencies. The department states that there was also a complete overhaul of the contested case process. In addition, according to the department, petitions for reconsideration, exceptions to final orders, contents of motions and pleadings, intervention versus protestation, and ex parte communications have been more clearly defined and described.

Although this is a fee rule, the department states that the rulemaking does not impose new fees or increase any already-established statutory fees. The department adds that the fees provided for in the rulemaking are set forth in section 42-221, Idaho Code.

Negotiated Rulemaking / Fiscal Impact

According to the department, negotiated rulemaking was conducted and there is no fiscal impact to the general fund.

Statutory Authority

The rulemaking appears to be authorized pursuant to chapters 17 and 18, title 42, Idaho Code.

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

cc: Idaho Department of Water Resources
Megan Jenkins

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES AND IDAHO WATER RESOURCE BOARD

DOCKET NO. 37-0101-2101 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 42-1701A(1), 42-1734(19), 42-1805(8), and 67-5206(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2021.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule:

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the “Agencies”) initiated this rulemaking in compliance with [Executive Order No. 2020-01](#), Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This rule chapter was scheduled for review in 2021.

With this Notice, the Agencies propose a new chapter of procedural rules. The new chapter is approximately 30% shorter than the existing chapter of procedural rules as a result of both internal agency analysis and external stakeholder negotiation, commentary, and editing. This reduction comes through a combination of: (a) removal of obsolete provisions (such as outdated references and processes for electronic signature); (b) the removal of Idaho Administrative Procedures Act provisions inapplicable to contested cases before the Agencies; and (c) a complete overhaul of the contested case process (including the condensing and use of plain language to describe intra-agency appeals, filing and service, and informal versus formal proceedings). Definitions previously spread throughout the rule chapter have been clarified and centralized in the definitional section. Distinctions between agency head, presiding officers, and hearing officers have been delineated and clarified. Updates have also been made to comply with the Agencies' understanding of current Idaho law (including clarification of party representation and administrative exhaustion). The following processes have also been more clearly defined and described: petitions for reconsideration, exceptions to final orders, contents of motions and pleadings, intervention versus protestation, and ex parte communications. The Agencies also propose to rename the rule chapter the “Rules of Procedure of the Idaho Department of Water Resources and Idaho Water Resource Board” to clarify that the chapter applies to both Agencies. The new proposed rule also recognizes electronic filing and service in many instances (both by email and through IDWR’s website).

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/procedure-rules.html>. At the same website, the Agencies also developed and provided two exhaustive response documents, which provide the Agencies’ responses to each substantive comment received through the negotiated rulemaking process.

Citizens of the state of Idaho, the Idaho Water Bar and other attorneys and judges, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in December of 2021.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Fees relevant to the proposed rule are set forth at Section 42-221, Idaho Code. This rulemaking does not impose new fees or increase any already-established statutory fees.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2021, Idaho Administrative Bulletin, Vol. 21-4, pages 51-52.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 27, 2021.

Dated this 30th day of August, 2021.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0101-2101
(New Chapter – Zero-Based Regulation Rulemaking)

37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES AND THE WATER RESOURCE BOARD

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1737(c), 42-1805(8), and 67-5206(5), Idaho Code. ()

001. SCOPE.

This chapter contains the rules of procedure that govern contested case proceedings before the Idaho Department of Water Resources and the Idaho Water Resource Board. These rules do not apply to enforcement actions under Section 42-1701B, Idaho Code. ()

002. DEFINITIONS.

01. Agency. The Idaho Department of Water Resources or the Idaho Water Resource Board acting

within their respective authority to determine contested cases. The term “agency” may include the Director of the Department, members of the Board, employees of the Department or Board, and any duly appointed hearing officers. ()

- 02. **Agency Action.** Agency action means: ()
 - a. The whole or part of an order; ()
 - b. The failure to issue an order; or ()
 - c. An agency’s performance of, or failure to perform, any duty placed on it by law. ()
- 03. **Agency Head.** The Board or Director of the Department. ()
- 04. **Board.** The Idaho Water Resource Board. ()
- 05. **Contested Case.** A formal or informal proceeding which results in the issuance of an order. ()
- 06. **Department.** The Idaho Department of Water Resources. ()
- 07. **Director.** The director of the Idaho Department of Water Resources. ()
- 08. **Exceptions.** A petition asking the agency head to review a recommended or preliminary order. ()
- 09. **Hearing Officer.** A hearing officer is a person other than the agency head appointed to preside over a formal proceeding in a contested case on behalf of the agency. 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. ()
- 10. **License.** The whole or part of any agency permit, license, approval, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. ()
- 11. **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. ()
- 12. **Party.** Each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including an applicant, petitioner, respondent, protestant or intervenor. ()
- 13. **Person.** Any individual, partnership, corporation, association, governmental subdivision, or public or private organization or entity of any character. ()
- 14. **Petition.** A pleading requesting a modification, amendment or stay of an existing order of the agency, the clarification, declaration or construction of the law administered by the agency, the clarification, declaration or construction of a person’s rights or obligations under law administered by the agency, rehearing of a contested case, or intervention, or to otherwise request the agency take action that will result in the issuance of an order. ()
- 15. **Presiding Officer.** One (1) or more members of the Board, the Director, or duly appointed hearing officer presiding over a formal proceeding as authorized by statute or rule. When more than one (1) member of the Board conducts a formal proceeding, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. ()
- 16. **Protest.** A pleading opposing or seeking to alter the outcome of an application. ()
- 17. **Response.** A pleading responding to a motion or petition. ()

003. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED.

These rules govern contested cases before the Department and the Board, unless otherwise provided by order of the agency. The Department and the Board through the promulgation of these rules decline to adopt in whole the contested case portions of the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01.100 through 04.11.01.799. However, the majority of the rules adopted here are consistent with the provisions of the Attorney General Rules. Certain provisions of the Attorney General Rules are not adopted or are modified to reflect both the statutory authority of and administrative practice before the Department and the Board. Rulemaking before the Department and the Board is governed by the Attorney General Rules, at IDAPA 04.11.01.05 and 04.11.01.800 through 860. ()

051. LIBERAL CONSTRUCTION.

The rules in this chapter will be liberally construed to ensure just, speedy and economical determination of all issues presented to the agency. 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 cases before the agency. ()

052. IDENTIFICATION OF CASE.

Communications pertaining to a contested case before the agency should include a reference to the case number or case name. ()

053. FILING AND SERVICE OF DOCUMENTS.

01. Filing of Documents with the Agency. ()

a. Documents may be filed with the agency by mail or personal delivery to the Department’s main office or any of the Department’s regional or field offices. See <https://idwr.idaho.gov/contact-us.html> for address and contact information. The agency will not accept filings by facsimile. A document sent by mail is considered filed on the date received by the agency. A document required to be accompanied by a filing fee is not considered filed with the agency until the fee is received. ()

b. Documents may be filed by email as an alternative to filing by mail or personal delivery, at the following email address: file@idwr.idaho.gov. For purposes of filing by email, a “day” begins at 12:01 a.m. and ends at midnight, Mountain Time. Unless otherwise provided by statute, rule, order or notice, a document is considered filed on the day the email is sent if done so before midnight, Mountain Time, unless that date is a Saturday, Sunday or legal holiday, in which case it is deemed filed on the next available business day. Documents filed by email shall include the case number or, if none, other identifying information in the email caption. A document required to be accompanied by a filing fee is not considered filed with the agency until the fee is received. ()

c. If the Department establishes an online process for filing specific applications or notices, filings may occur through the specific online data submittal portal. ()

02. Service on Parties and Other Persons. ()

a. All documents filed with the agency must be sent by mail or delivered personally to the representatives of each party concurrently with filing the original with the agency. ()

b. If authorized by the presiding officer, documents that must be sent by mail or delivered personally to the representatives of each party may be served by email as an alternative to service by mail or personal service. It is not necessary to serve copies by mail or personal service if service is completed by email. ()

03. Service of Documents by Agency. ()

a. Any person designated by the agency to serve notices or orders issued by the agency shall serve these documents by regular mail, or by certified mail, return receipt requested, or by personal service on the

representatives of each party designated pursuant to these rules. ()

b. If authorized by the presiding officer, the person designated to serve notices and orders in a contested case may serve those notices and orders by email as an alternative to service by mail or personal service. It is not necessary to serve copies by mail or personal service if service is completed by email. ()

04. Format for Electronic Service. Documents served by email must be in Portable Document Format (PDF) and be text searchable. Each email serving a document cannot be larger than 15 megabytes in size. Documents exceeding 15 megabytes in size may be divided into multiple documents and served in multiple emails. ()

05. Proof of Service. Every document filed or served must be accompanied by a proof of service similar to the following certificate:

CERTIFICATE OF SERVICE

I certify that on the ____ day of _____, 20____, I served or caused to be served the [insert title of document] to the parties by the following method(s):

[Insert name of party or attorney]
[Insert email address or mailing address]

- Email
- USPS Mail (postage paid)
- Certified Mail / Return Receipt Requested
- Hand Delivery

[Signature]

[Insert name of person responsible for service]

()

06. When Service Complete. Unless otherwise provided by statute, these rules, order or notice, service is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a State employee or State agency, or when there is an electronic verification that an email has been sent. ()

054. COMPUTATION OF TIME.

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. ()

055. FEES.

If submitted by mail or in person, fees paid to the agency may be paid by cash, money order, bank draft or check payable to the agency. Payments in cash, submitted by mail, are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. Fees may also be paid by credit card or other digital methods, if allowed by the agency. Filings required to be accompanied by a fee are not complete until the fee is paid. ()

056. -- 099. (RESERVED)

100. INFORMAL AND FORMAL PROCEEDINGS.

Contested cases before the agency shall be conducted as informal or formal proceedings. ()

01. Informal Proceedings Defined. Informal proceedings are wholly administrative evaluations and processes, without a presiding officer and hearing record to be preserved for later agency or judicial review, and with representation according to Rule 201.01. ()

02. Formal Proceedings Defined. Formal proceedings are quasi-judicial proceedings conducted by a presiding officer, with a hearing record to be preserved for later agency or judicial review, and with representation according to Rule 201.02. ()

03. Order of Proceedings. Unless otherwise directed by the agency, informal proceedings will be used first in an effort to resolve the issues presented in a contested case. If, after the agency has commenced a formal proceeding, the parties to a contested case settle or resolve the issues of the case, the case may return to an informal proceeding. The agency may also utilize informal proceedings, such as settlement conferences, any time after commencement of a formal proceeding. ()

101. INFORMAL PROCEEDINGS.

01. Initial Processing. Informal proceedings include correspondence and the exchange of information between the agency and an applicant or petitioner during the agency’s review of an application or petition. If a protest is filed opposing an application, or a response is filed to a petition, the agency will issue a Notice of Informal Settlement Conference. The agency may also issue a Notice of Informal Settlement Conference in un-protested one-party contested cases, where a party has requested a hearing before the agency. ()

02. Informal Settlement Conference. All parties to a contested case or their representatives must attend the informal settlement conference. The informal settlement conference may be conducted by an agency employee. Informal settlement conferences are used to discuss applications or pleadings, explore settlement options, discuss the commencement and scheduling of formal proceedings, discuss additional informational needs, and evaluate the need for additional informal proceedings or alternative dispute resolution options such as mediation. The agency may conduct additional informal proceedings, which all parties or their representatives must attend, to assess the potential for settlement or resolution of all or a portion of the issues in a contested case. ()

03. Stay of Informal Proceedings. During informal proceedings the agency may stay the contested case at the request of the applicant or petitioner, upon stipulation of the parties, when the agency determines that such delay will assist the agency in resolving or deciding the contested case, or when an agency moratorium prevents consideration of the application or petition. ()

102. FORMAL PROCEEDINGS.

When the agency determines that informal proceedings are unlikely to resolve a contested case, the agency will initiate formal proceedings by issuing a Notice of Prehearing Conference and identifying a presiding officer. Representation of parties and other persons in formal proceedings is governed by Rule 201.02. ()

103. -- 149. (RESERVED)

150. PARTIES TO CONTESTED CASES LISTED.

Parties to contested cases before the agency are called applicants, petitioners, respondents, protestants, or intervenors. On reconsideration or exceptions within the agency parties are called by their original titles from the previous sentence. ()

151. APPLICANTS.

Persons who seek any right, license, award or authority from the agency. ()

152. PETITIONERS.

Persons not applicants who seek to modify, amend or stay existing orders of the agency, to clarify or have the agency declare or construe the law administered by the agency or a person’s rights or obligations under law administered by the agency, to ask the agency to initiate or rehear a contested case (other than an application), to intervene in a contested case, or to otherwise take action that will result in the issuance of an order. ()

153. RESPONDENTS.

Persons who file responses to a petition. ()

154. PROTESTANTS.

Persons who oppose or seek to alter an application and who have a statutory right to contest or seek to alter the right, license, or authority sought by an applicant. ()

155. INTERVENORS.

Persons, not applicants, petitioners, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354. ()

156. RIGHTS OF PARTIES AND OF AGENCY STAFF.

Subject to Rules 558, 559, 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 a contested case before the agency. ()

157. -- 199. (RESERVED)

200. IDENTIFICATION OF REPRESENTATIVES AND ADDRESS FOR SERVICE.

The initial pleading of a party (be it application, petition, protest, or motion) must identify the party's representative, if any, and state the mailing address and email address, if any, to be used for service of all documents. If a representative is identified, service of documents on the named representative is considered valid service upon the party. If an initial pleading is signed by more than one (1) person without identifying a representative for service of documents, the agency may select the person upon whom documents are to be served. A party is responsible for updating the agency with changes to its contact information for service of documents. ()

201. REPRESENTATION OF PARTIES.

01. Representation at Informal Proceedings. Appearances and representation of parties or other persons at an informal proceeding described in Rule 100 and Rule 101 must be as follows: ()

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

b. A partnership may be represented by a partner, authorized employee, or attorney. ()

c. A corporation may be represented by an officer, authorized employee, or attorney. ()

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

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

02. Appearances and Representation at Formal Proceedings. Appearances and representation of parties or other persons at a formal proceeding described in Rule 100 and Rule 102 must be as follows: ()

a. A party who is a natural person may represent himself or herself or be represented by an attorney. ()

b. A federal or tribal governmental entity or agency may be represented as provided by law. ()

c. All other parties shall appear and be represented by an attorney admitted to practice and in good standing in the state of Idaho. ()

d. Only parties or their representatives at hearing are entitled to examine witnesses and file, make or argue motions. ()

202. SERVICE ON PARTIES AND THEIR REPRESENTATIVES.

From the time a party files its initial pleading in a contested case, that party must serve all documents filed with the

agency upon all other parties or their designated representatives 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 parties or their representatives. ()

203. WITHDRAWAL OF PARTIES.

Any party may withdraw from a contested case in writing or by confirming the withdrawal on the record at a conference or hearing. ()

204. SUBSTITUTION OR WITHDRAWAL OF REPRESENTATIVE.

A party's representative may be changed by notice to the agency and all other parties. A presiding officer, if assigned, may reject the substitution of representative if the substitution would result in an unreasonable delay of the proceeding. Persons representing a party in a contested case before the agency who wish to withdraw their representation must immediately file with the agency a notice of withdrawal of representation and serve that notice on the party represented, and all other parties. ()

205. STANDARDS OF CONDUCT.

All persons participating in or attending a contested case proceeding before the agency must conduct themselves in an ethical, courteous, and respectful manner during all phases of the proceeding. The presiding officer may exclude a person from a proceeding who in manner or appearance is disruptive or disrespectful. Disruptive conduct or appearance that is serious in nature may be cause for dismissal of the disrupting party from the proceeding. ()

206. -- 209. (RESERVED)

210. PLEADINGS ALLOWED IN CONTESTED CASES.

In contested cases, the agency allows the following pleadings to be filed: applications, petitions, protests, and responses. ()

211. -- 219. (RESERVED)

220. MOTIONS.

01. Motion - Defined. A "motion" is a request to the agency to take an action in a contested case. ()

02. Procedure on Written Motions. ()

a. A written motion, affidavit(s) supporting the motion, and briefs supporting the motion, if any, must be filed with the agency and served on the parties. ()

b. Briefs or affidavits responding to the motion, if any, must be filed with the agency and served on the parties within fourteen (14) days of the filing of a motion. ()

c. The moving party may file a reply brief, which must be filed with the agency and served on the parties within 7 days of the filing of the responsive affidavits or briefs. ()

d. The moving party must indicate on the face of the motion whether oral argument is desired. ()

e. If oral argument has been requested on any motion, the presiding officer may grant or deny oral argument by written or oral notice. The presiding officer may limit oral argument at any time. ()

f. Modifications to the time limits in this rule may be granted by the presiding officer for good cause shown. ()

03. Motions for Summary Judgment. Motions for summary judgment may be filed in any contested case. Rule 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, apply to such motions before the agency. ()

221. -- 299. (RESERVED)

300. FORM AND CONTENT OF PLEADINGS AND WRITTEN MOTIONS.

01. Form. Pleadings should be filed on standard forms created by the agency, if available. Pleadings and written motions not filed on standard forms should include a caption identifying the case at the top of the first page and shall: ()

a. Be submitted on white, eight and one-half inch (8 1/2”) by eleven inch (11”) paper printed on one (1) side only; ()

b. Identify the case name, case number (if applicable), and title of the document; ()

c. Include the mailing address, telephone number, and email address of the person(s) filing the document; and ()

d. Have at least one inch (1”) margins on the sides, top, and bottom. ()

02. Content of Pleadings and Written Motions. A pleading or written motion shall fully state: ()

a. The facts upon which it is based; ()

b. The provision of statute, rule, order, or other controlling law upon which it is based; and ()

c. The relief sought, including any proposed limitation (or the denial) of any right, license, or permit sought in an application. ()

d. Petitions for declaratory orders shall state the declaratory ruling that the petitioner seeks. ()

301. NOTICE OF PETITION FOR DECLARATORY RULING.

The agency may provide notice of a petition for declaratory ruling in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. ()

302. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS.

Defective, insufficient or late pleadings may be returned or dismissed. ()

303. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS.

The agency may allow amendments to pleadings during informal proceedings. The presiding officer may allow amendments to pleadings during formal proceedings. 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 seven (7) days after filing. ()

304. -- 349. (RESERVED)

350. PETITIONS TO INTERVENE.

A person who is not already a party to a contested case and who has a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case. ()

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.

Petitions to intervene must comply with Rules 52, 200, and 300. 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. ()

352. TIMELY FILING OF PETITIONS TO INTERVENE.

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions

filed after this deadline are considered late and must state a good cause for delay. ()

353. DECIDING PETITIONS TO INTERVENE.

01. Timely-Filed Petitions. If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. ()

02. Late Petitions. The agency may grant late petitions to intervene for good cause shown or may deny or conditionally grant petitions to intervene that are late for failure to state good cause for the late filing, to prevent disruption, to prevent prejudice to existing parties, to prevent undue broadening of the issues, or for other reasons. ()

03. Order and Notices Issued Prior to Intervention. Intervenors are bound by orders and notices entered in the contested case prior to the approval of the petition to intervene. ()

354. ORDERS GRANTING INTERVENTION -- OPPOSITION.

Any party opposing a petition to intervene must file an objection within (7) days of the date the petition is filed. Responses to the objection must be filed within seven (7) days of the service date of the objection. The objection and responses to the proposed intervention must be served on all parties of record and on the person petitioning to intervene. ()

355. PUBLIC WITNESSES.

A person who is not a party and is not called by a party as a witness who desires to testify at hearing is a public witness. Public witnesses do not have the right to examine witnesses or otherwise participate in the proceedings as parties. Subject to Rules 555 and 557, public witnesses have a right to introduce evidence at hearing by written or oral statements and to offer exhibits at hearing. Public witnesses are bound by scheduling orders issued in a contested case regarding disclosure of expert reports and exhibits prior to the hearing. A person intending to present public witness testimony shall notify the agency in writing at least five (5) days prior to the hearing and 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 witness testimony will only be allowed at the discretion of the presiding officer upon a finding of good cause. Public witnesses are subject to cross-examination and exhibits offered by public witnesses are subject to objection. Public witnesses have no right to seek reconsideration, file exceptions, or appeal. ()

356. -- 409. (RESERVED)

410. APPOINTMENT OF HEARING OFFICERS.

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. ()

411. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.

Presiding officers may be disqualified as provided in Section 67-5252, Idaho Code. ()

412. SCOPE OF AUTHORITY OF HEARING OFFICERS.

The scope of hearing officers' authority may be restricted in the appointment by the agency. ()

01. Scope of Authority. Unless specified in an order from the agency, hearing officers have the authority to: ()

a. Decide petitions to intervene and motions; ()

b. Schedule cases assigned to the hearing officer, including authority to issue notices of default, of prehearing conference and of hearing; ()

c. Schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ()

d. Consider stipulations and settlements; ()

e. Preside at and conduct conferences and hearings, accept evidence into the record, rule upon objections to evidence, rule on dispositive motions, and otherwise oversee the orderly presentation of evidence at hearing in accordance with these Rules; and ()

f. Issue a written decision for a contested case, including a narrative of the proceedings, findings of fact, conclusions of law, and a recommended or preliminary order. ()

02. Limitation. The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. ()

413. CHALLENGES TO STATUTES.

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. ()

414. EX PARTE COMMUNICATIONS.

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). Communications with a presiding officer regarding non-substantive issues 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 case before the agency 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 becomes aware of a communication regarding any substantive issue from a party or representative of a party or a member of the general public during a contested case, the presiding officer 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 are cause for the presiding officer to dismiss an action or to dismiss a party from a contested case. Written communications from a party showing service upon all other parties are not ex parte communications. ()

415. -- 509. (RESERVED)

510. PURPOSES OF PREHEARING CONFERENCE.

To initiate formal proceedings in a contested case pursuant to Rule 102, the agency will issue a Notice of Prehearing Conference, identifying the presiding officer for the case and setting the date and time for prehearing conference. The prehearing conference shall be convened for 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. ()

511. ADDITIONAL CONFERENCES.

The presiding officer may, following the initial prehearing conference, convene additional conferences. Additional conferences will address the topics identified in Rule 510, unless the topics are further defined in the notice of such conference. ()

512. NOTICE OF CONFERENCE.

Notice of the place, date and hour of a conference will be served on all parties at least fourteen (14) days before the time set for the conference, unless the presiding officer finds it necessary or appropriate for the notice period to be shortened. Notices must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act. ()

513. RECORD OF CONFERENCE.

Prehearing conferences or status conferences may be held on the record or off the record. Agreements entered into by the parties during a conference may be put on the record during the conference or may be reduced to writing and filed with the agency after the conference. ()

514. ORDERS RESULTING FROM CONFERENCE.

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. ()

515. FACTS DISCLOSED NOT PART OF THE RECORD.

Facts disclosed, settlement offers made and all other aspects of negotiation (except agreements reached) in conferences in a contested case are not part of the record unless ordered by the presiding officer upon a stipulation by all parties to a contested case. ()

516. -- 519. (RESERVED)

520. DISCOVERY IN CONTESTED CASES.

01. Kinds of Discovery. The following kinds of discovery may be authorized by presiding officers in contested cases before the agency: ()

- a. Deposition through oral examination or written questions; ()
- b. Written interrogatories; ()
- c. Requests for Admission; ()
- d. Requests for production of documents, electronically stored information or tangible things; and ()
- e. Entry upon land or other property for inspection or other purposes; ()

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, the scope of discovery is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26). ()

521. WHEN DISCOVERY AUTHORIZED.

No party in a contested case before the agency is entitled to engage in discovery unless the presiding officer issues an order authorizing discovery, or upon agreement of all parties that discovery may be conducted. The presiding officer may provide a schedule for discovery in an order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The order authorizing discovery may provide that voluminous records need not be served in a discovery response so long as the records are made available for inspection and copying under reasonable terms. A party, upon reasonable notice to other parties and all persons affected thereby, may seek an order compelling discovery in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure. The presiding officer may limit the type and scope of discovery. ()

522. RIGHTS TO DISCOVERY RECIPROCAL.

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. ()

523. SUBPOENAS.

The presiding officer may issue subpoenas upon a party's motion or upon its own initiative. The presiding officer 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. ()

524. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC.

This rule recognizes, but does not enlarge or restrict, the agency's statutory right of inspection, examination, or investigation. This statutory right of the agency is independent of 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, or investigation may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. ()

525. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS.

Parties shall send the presiding officer copies of any notices of deposition or certificates of service stating that discovery requests or responses have been served. Parties shall serve discovery requests and responses on all other parties. Parties shall not serve the presiding officer copies of discovery responses unless it is part of a motion to compel discovery. A motion to compel discovery must be filed within twenty-one (21) days from the day a discovery response was due or twenty-one (21) days from the day a deficient response was served on the moving party. ()

526. PREPARED TESTIMONY AND REPORTS.

Presiding officers may require parties to exchange prepared testimony, expert witness reports or rebuttal reports, prior to the hearing. ()

527. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY.

The presiding officer 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. ()

528. PROTECTIVE ORDERS.

As authorized by statute or rule, the presiding officer may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. ()

529. -- 549. (RESERVED)

550. NOTICE OF HEARING.

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 presiding officer finds by order that it is necessary or appropriate that the notice period to be shortened. 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 officer(s) who will hear the case, the name, address and telephone number of the person to whom inquiries 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. ()

551. FACILITIES AT OR FOR HEARING AND A.D.A. REQUIREMENTS.

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 assistance request must be made. ()

552. METHODS FOR CONDUCTING HEARINGS.

Hearings may be held in person or by telephone, video or other electronic means, as long as each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. ()

553. CONFERENCE AT HEARING.

In any proceeding the presiding officer may hold a conference with the parties before hearing or during a recess at 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. ()

554. PRELIMINARY PROCEDURE AT HEARING.

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 of evidence. ()

555. CONSOLIDATION OF PROCEEDINGS.

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. ()

556. STIPULATIONS.

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the agency or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The presiding officer may regard a stipulation as evidence or may require additional evidence supporting the facts stipulated. The presiding officer is not required to adopt the facts set forth in a stipulation of the parties, but may do so. If the presiding officer rejects a stipulation, they will do so before issuing a final order, and will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. ()

557. ORDER OF PROCEDURE.

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. ()

558. TESTIMONY UNDER OATH.

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. ()

559. PARTIES AND PERSONS WITH SIMILAR INTERESTS.

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. ()

560. CONTINUANCE OF HEARING.

The presiding officer may continue proceedings for further hearing. ()

561. ORAL ARGUMENT.

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. ()

562. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER.

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. ()

563. -- 599. (RESERVED)

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE.

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that

development. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any resulting 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, rule 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. ()

601. DOCUMENTARY EVIDENCE.

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. ()

602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA.

The presiding officer may take official notice of any facts that could be judicially noticed in the courts of Idaho, of generally recognized technical or scientific data or facts within the agency's specialized knowledge and records of the agency. The presiding officer may ask agency staff to prepare reports or memoranda to be used in deciding a contested case, and all such reports and memoranda shall be officially noticed by the presiding officer. The presiding officer shall notify the parties of specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. This notice 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 take official notice of 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. ()

603. OBJECTIONS -- OFFERS OF PROOF.

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. 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. ()

604. EXHIBITS.

The presiding officer may assign exhibit numbers to be used by the parties in preparation of proposed exhibits. 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. ()

605. -- 609. (RESERVED)

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS.

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 unless ordered by the presiding officer upon a stipulation by all parties to a contested case. If the parties to a contested case participate in mediation, I.R.E. 507 applies and the mediation privilege is recognized. ()

611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS.

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 the parties to consider settlement of an entire proceeding or certain issues. ()

612. CONSIDERATION OF SETTLEMENTS.

The presiding officer is not bound by settlement agreements and will independently review any proposed settlement. 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. ()

613. -- 649. (RESERVED)

650. RECORD FOR DECISION.

01. Official Record. The agency shall maintain an official record including the items described in section 67-5249, Idaho Code for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. ()

651. RECORDING OF HEARINGS.

The agency shall make an audio or video recording of all hearings at the agency's expense. The agency may provide 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 copy of the transcript without charge. ()

652. -- 699. (RESERVED)

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND.

If a party fails to appear at the time and place set for hearing, prehearing conference, status conference, or informal settlement conference, or fails to respond to a written information inquiry, the agency may serve upon all parties a notice of a proposed default against the absent or non-responsive party. 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 subject party to appear at the time and place set for hearing or prehearing conference, or informal settlement conference or to respond to an information inquiry. The notice of proposed default order shall be served consistent with Rule 53. ()

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER.

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. ()

702. ISSUANCE OF DEFAULT ORDER.

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) day time period to file a petition challenging the proposed default order. 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. All issues in the contested case shall be determined, including those affecting the defaulting party. ()

703. -- 709. (RESERVED)

710. INTERLOCUTORY ORDERS.

Interlocutory orders or intermediate orders are orders that do not decide all previously undecided issues presented in a proceeding, except the presiding officer may by order decide some of the issues presented in a proceeding and provide that the decision on those issues is final and subject to review by reconsideration or exceptions filed with the agency head, or judicial review in district court, 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 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 authorizing, compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the presiding officer issuing the order pursuant to Rules 711, 760, and 770. ()

711. REVIEW OF INTERLOCUTORY ORDERS.

Any party or person affected by an interlocutory order may petition the presiding officer to review the interlocutory order. The presiding officer may rescind, alter or amend any interlocutory order on the presiding officer's own motion, but will not on the presiding 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. ()

712. CONTENTS OF ORDERS.

The contents of an order shall comply with Section 67-5248, Idaho Code. ()

713. -- 719. (RESERVED)

720. RECOMMENDED ORDERS.

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

02. Contents. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. ()

b. Any party may file a petition for reconsideration of this recommended order with the hearing officer 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. ()

c. Any party may in writing support or file 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 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. ()

d. 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: ()

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

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

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

e. 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 head or designee may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ()

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS.

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

02. Contents. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a preliminary order of the agency. It can and will become final without further action of the

agency unless a party petitions for reconsideration, files exceptions with the agency head, or requests a hearing pursuant to Section 42-1701A(3), Idaho Code. Filing exceptions to the agency head is not required in order to exhaust administrative remedies. ()

b. A party may file a petition for reconsideration of this preliminary order with the agency 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 67-5243(3), Idaho Code. ()

c. Any party may in writing file 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) within fourteen (14) days after: ()

i. The service date of this preliminary order; ()

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

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order. ()

d. If any party files exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's exceptions. 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. ()

e. 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 extended for good cause. The agency head or designee may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ()

f. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Director or the Board is otherwise provided by statute, any person aggrieved by any action of the Director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Director, who is aggrieved by the action of 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 action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. A preliminary order shall not become final if a request for hearing under Section 42-1701A(3), Idaho Code is filed with the Department within the time prescribed for filing a petition for reconsideration. ()

g. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, all administrative remedies shall be deemed exhausted, and any party aggrieved by the final order or orders previously issued in this case may file a petition for judicial review of 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: ()

i. A hearing was held; ()

ii. The final agency action was taken; ()

iii. The party seeking review of the order resides; or ()

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

h. A petition for judicial review must be filed within twenty-eight (28) days of this preliminary order

becoming final. See Section 67-5273, Idaho Code. The filing of a petition for judicial review does not stay the effectiveness or enforcement of the order under review. ()

731. -- 739. (RESERVED)

740. FINAL ORDERS.

01. Definition. Final orders are preliminary orders that have become final 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. ()

02. Content. Every final order issued by the agency head must contain or be accompanied by a document containing the following, or substantially similar, paragraphs: ()

a. This is a final order of the agency. ()

b. 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. ()

c. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Director or the Board is otherwise provided by statute, any person aggrieved by any action of the Director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Director, who is aggrieved by the action of 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 action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. This order shall not be subject to judicial review in district court if a request for hearing under Section 42-1701A(3), Idaho Code is filed with the Department within the time prescribed for filing a petition for reconsideration. ()

d. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case shall be deemed to have exhausted all administrative remedies and may file a petition for judicial review of 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: ()

i. A hearing was held; ()

ii. The final agency action was taken; ()

iii. The party seeking review of the order resides; or ()

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

e. A petition for judicial review 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 a petition for judicial review does not stay the effectiveness or enforcement of the order under review. ()

741. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED.

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. ()

751. -- 759. (RESERVED)

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION.

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 or by 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 or by substituting a new final order for it. ()

761. -- 769. (RESERVED)

770. CLARIFICATION OF ORDERS.

Any party 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. ()

771. -- 779. (RESERVED)

780. STAY OF ORDERS.

Any party 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. ()

781. -- 789. (RESERVED)

790. PERSONS WHO MAY FILE A PETITION FOR JUDICIAL REVIEW.

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may file a petition for judicial review with the district court. Pursuant to Section 67-5271, Idaho Code, a party 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. ()

791. -- 799. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, the private sector, or both.

Department or Agency: Idaho Department of Water Resources; Idaho Water Resource Board

Agency Contact: Mat Weaver **Phone:** 208-287-4914

Date: August 30, 2021

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 37.01.01 – Rule of Procedure of the Idaho Department of Water Resources

Fee Rule Status: **Proposed** **Temporary**

Rulemaking Docket Number: 37-0101-2101

STATEMENT OF ECONOMIC IMPACT:

This rulemaking does not impose new fees or increase any already-established fees. Any potential fees relevant to the rule are set forth in statute at Idaho Code § 42-221 and are not affected by this rulemaking. The Agencies are otherwise unable to discern or quantify an economic impact as a result of the proposed rule as it is procedural in nature. The intent of the proposed rule is to make contested case procedures before the Agencies easier and more efficient for Idaho water users, which may provide a positive economic impact to those users.