

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 52
IDAHO ADMINISTRATIVE PROCEDURE ACT

67-5201. DEFINITIONS. As used in this act:

(1) "Administrative code" means the Idaho administrative code established in this chapter.

(2) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(3) "Agency action" means:

(a) The whole or part of a rule or order;

(b) The failure to issue a rule or order; or

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

(4) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(5) "Bulletin" means the Idaho administrative bulletin established in this chapter.

(6) "Contested case" means a proceeding which results in the issuance of an order.

(7) "Coordinator" means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.

(8) "Document" means any executive order, notice, rule or statement of policy of an agency.

(9) "Final rule" means a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

(10) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.

(11) "Official text" means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.

(12) "Order" means 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.

(13) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(14) "Pending rule" means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review.

(15) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(16) "Proposed rule" means a rule published in the bulletin as provided in section 67-5221, Idaho Code.

(17) "Provision of law" means the whole or a part of the state or federal constitution, or of any state or federal:

- (a) Statute; or
- (b) Rule or decision of court.

(18) "Publish" means to bring before the public by publication in the bulletin or administrative code, by electronic means or as otherwise specifically provided by law.

(19) "Rule" means the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

- (a) Law or policy; or
- (b) The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:
 - (i) Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or
 - (ii) Declaratory rulings issued pursuant to section 67-5232, Idaho Code; or
 - (iii) Intra-agency memoranda; or
 - (iv) Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(20) "Rulemaking" means the process for formulation, adoption, amendment or repeal of a rule.

(21) "Standard" means a manual, guideline, criterion, specification, requirement, measurement or other authoritative principle providing a model or pattern in comparison with which the correctness or appropriateness of specified actions, practices or procedures may be determined.

(22) "Submitted for review" means that a rule has been provided to the legislature for review at a regular or special legislative session as provided in section 67-5291, Idaho Code.

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

[67-5201, added 1965, ch. 273, sec. 1, p. 701; am. 1980, ch. 213, sec. 1, p. 485; am. 1981, ch. 192, sec. 1, p. 339; am. 1986, ch. 318, sec. 1, p. 783; am. 1992, ch. 263, sec. 1, p. 786; am. 1993, ch. 216, sec. 101, p. 670; am. 1996, ch. 161, sec. 1, p. 530; am. 2000, ch. 203, sec. 3, p. 511; am. 2010, ch. 20, sec. 1, p. 33.]

67-5202. OFFICE OF ADMINISTRATIVE RULES COORDINATOR. (1) There is hereby established the office of administrative rules coordinator in the department of administration. The coordinator shall be a nonclassified employee and shall be appointed by and serve at the pleasure of the director of the department of administration. All other employees of the office of administrative rules employed on July 1, 1996, shall be classified employees, but upon their termination their positions and any positions vacant upon July 1, 1996, shall be nonclassified positions and any persons employed to fill positions in the office of administrative rules thereafter shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(2) The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.

(3) The coordinator shall receive all notices and rules required in this chapter to be published in the bulletin or the administrative code. The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all agencies. The coordinator shall review all submitted rules for style, form, and numbering, and may return a rule that is not in proper style, form, or number.

[67-5202, added 1992, ch. 263, sec. 2, p. 788; am. 1994, ch. 180, sec. 218, p. 555; am. 1996, ch. 119, sec. 1, p. 433; am. 2008, ch. 183, sec. 1, p. 555.]

67-5203. PUBLICATION OF ADMINISTRATIVE BULLETIN. (1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published electronically in the bulletin. The bulletin shall be published electronically by the administrative rules coordinator not less frequently than the first Wednesday of each calendar month, but not more frequently than every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

(a) All executive orders of the governor;

(b) Agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and pending rules, together with any explanatory material supplied by the agency;

(c) All agency documents required by law to be published in the bulletin; and

(d) Any legislative documents affecting a final agency rule.

(5) The text of all documents published electronically in the bulletin shall be the official text of that document until the document has been published in the administrative code. Judicial notice shall be taken of all documents published electronically in the bulletin.

[67-5203, added 1992, ch. 263, sec. 3, p. 789; am. 1993, ch. 216, sec. 102, p. 672; am. 1993, ch. 245, sec. 1, p. 854; am. 1994, ch. 371, sec. 1, p. 1194; am. 1996, ch. 161, sec. 2, p. 532; am. 2010, ch. 21, sec. 1, p. 37.]

67-5204. PUBLICATION OF ADMINISTRATIVE CODE. (1) The administrative rules coordinator shall every year publish electronically a publication to be known as the "Idaho Administrative Code."

(2) The administrative code shall be a codification of:

(a) All executive orders of the governor that have been published in the bulletin and have not been rescinded;

(b) The text of all final rules;

(c) Any legislative documents affecting a final agency rule; and

(d) All documents required by law to be published in the administrative code.

(3) The text of all documents published electronically in the administrative code shall be the official text of that document. Judicial notice shall be taken of all documents published electronically in the administrative code.

[67-5204, added 1992, ch. 263, sec. 4, p. 789; am. 1993, ch. 216, sec. 103, p. 673; am. 1996, ch. 161, sec. 3, p. 532; am. 2010, ch. 20, sec. 2, p. 35.]

67-5205. FORMAT -- COSTS -- DISTRIBUTION -- FUNDS. (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual electronic copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual electronic copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, and for rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state.

(3) The coordinator shall provide to the legislature free electronic copies of all rules subject to review by the legislature pursuant to section 67-5291, Idaho Code, and may distribute other free electronic copies for official use.

(4) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(5) There is hereby created in the state treasury the administrative code fund. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and for providing electronic access, shall be deposited in the fund. All agencies which have any material published electronically in the bulletin, administrative code or supplements thereto, or newspapers, are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of such publication and distribution of such material. All moneys placed in the fund may be appropriated to the coordinator for the administration of the provisions of this chapter, and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

The coordinator shall charge an annual fee to each participating agency for each page published electronically in the administrative code not to exceed fifty-six dollars (\$56.00) per page. In addition, the coordinator

shall charge a fee to each participating agency for each page published electronically in the bulletin not to exceed sixty-one dollars (\$61.00) per page. A fee per page may be charged even though less than a full page of publication is required, and each participating agency shall promptly pay into the administrative code fund such charge.

[67-5205, added 1992, ch. 263, sec. 6, p. 790; am. 1993, ch. 245, sec. 2, p. 854; am. 1994, ch. 371, sec. 2, p. 1195; am. 1996, ch. 159, sec. 23, p. 525; am. 1996, ch. 161, sec. 4, p. 533; am. 1996, ch. 162, sec. 1, p. 540; am. 2006, ch. 235, sec. 32, p. 719; am. 2008, ch. 13, sec. 2, p. 18; am. 2010, ch. 20, sec. 3, p. 35; am. 2016, ch. 185, sec. 1, p. 497.]

67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE ACT. (1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:

- (a) establish a uniform numbering system applicable to rules adopted by all agencies;
- (b) establish a uniform style and format applicable to rules adopted by all agencies;
- (c) establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;
- (d) establish a uniform indexing system for agency orders; and
- (e) include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.

(2) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules of procedure appropriate for use by as many agencies as possible. The rules shall deal with all general functions and duties performed in common by several agencies.

(3) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5220 through 67-5232, Idaho Code. The rules shall specify:

- (a) the form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;
- (b) procedures for the creation of a record of comments received at any oral presentation;
- (c) the standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;
- (d) the form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;
- (e) procedures to facilitate negotiated rulemaking;
- (f) the form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and
- (g) such other provisions as may be necessary or useful.

(4) In accordance with the rule making [rulemaking] requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5240 through 67-5255, Idaho Code. The rules shall specify:

- (a) form and content to be employed in giving notice of a contested case;

- (b) procedures and standards required for intervention in a contested case;
- (c) procedures for prehearing conferences;
- (d) format for pleadings, briefs, and motions;
- (e) the method by which service shall be made;
- (f) procedures for the issuance of subpoenas, discovery orders, and protective orders if authorized by other provisions of law;
- (g) qualifications for persons seeking to act as a hearing officer;
- (h) qualifications for persons seeking to act as a representative for parties to contested cases;
- (i) procedures to facilitate informal settlement of matters;
- (j) procedures for placing ex parte contacts on the record; and
- (k) such other provisions as may be necessary or useful.

(5) (a) After July 1, 1993, the rules promulgated by the attorney general under this section shall apply to all agencies that do not affirmatively promulgate alternative procedures after the promulgation of the rules by the attorney general. The rules promulgated by the attorney general shall supersede the procedural rules of any agency in effect on June 30, 1993, unless that agency promulgates its own procedures as provided in paragraph (b) of this subsection.

(b) After July 1, 1993, an agency that promulgates its own procedures shall include in the rule adopting its own procedures a finding that states the reasons why the relevant portion of the attorney general's rules were inapplicable to the agency under the circumstances.

[67-5206, added 1992, ch. 263, sec. 7, p. 791; am. 1993, ch. 216, sec. 104, p. 673.]

67-5207. SHORT TITLE. This chapter may be cited as the "Idaho Administrative Procedure Act."

[67-5207, added 1992, ch. 263, sec. 8, p. 793.]

67-5220. NOTICE OF INTENT TO PROMULGATE RULES -- NEGOTIATED RULEMAKING. (1) Prior to the adoption, amendment or repeal of a rule, an agency shall determine whether negotiated rulemaking is feasible. The agency's determination of whether negotiated rulemaking is feasible is not subject to judicial review. If the agency determines that negotiated rulemaking is feasible, it shall publish in the bulletin a notice of intent to promulgate a rule. The notice shall contain a brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking, and shall include the purpose of the rule, the statutory authority for the rulemaking, citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking, and the principal issues involved. The notice shall also state that interested persons have the opportunity to participate with the agency in negotiated rulemaking as provided in this section and shall identify an individual to whom comments on the proposal may be sent. If the agency determines that negotiated rulemaking is not feasible, it shall explain why negotiated rulemaking is not feasible in a notice of proposed rulemaking published pursuant to section 67-5221, Idaho Code, and shall proceed with rulemaking as provided pursuant to this chapter. Each agency that has a website shall cause the notice of intent to promulgate rules to be placed onto or accessible from the home page of the agency's website.

(2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule. Agencies shall proceed through such informal rulemaking whenever it is feasible to do so in order to improve the substance of proposed rules by drawing upon shared information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking.

(3) To facilitate the achievement of the purposes of this section, agencies shall, at a minimum:

(a) Provide a reasonable period of time for interested persons to respond to the notice of intent to promulgate rules;

(b) Provide notice of meetings to interested persons who responded to the notice of intent to promulgate rules;

(c) Upon request, make available to persons attending the meetings all information that is considered by the agency in connection with the formulation of the proposed rule and that is not exempt from disclosure pursuant to chapter 1, title 74, Idaho Code;

(d) Consider the recommendations of interested persons concerning the subject of the proposed rule;

(e) Establish, maintain and timely update the negotiated rulemaking schedule and a list of written comments and other documents and information pertinent to the proposed rule and make that information available to persons attending the negotiated rulemaking meeting;

(f) Prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking and make that summary available to persons who attended the negotiated rulemaking meetings.

[67-5220, added 1992, ch. 263, sec. 9, p. 793; am. 1994, ch. 271, sec. 1, p. 834; am. 2012, ch. 310, sec. 1, p. 856; am. 2015, ch. 141, sec. 175, p. 518.]

67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

(a) The specific statutory authority for the rulemaking, including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking;

(b) A statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

(c) Except as otherwise required in paragraph (d) of this subsection, 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 when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule;

(d) If a notice of proposed rulemaking of the Idaho state tax commission, a specific description of any negative or positive fiscal impact greater than ten thousand dollars (\$10,000) during the fiscal

year when the pending rule will become effective; provided however, notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule;

- (e) The text of the proposed rule prepared in legislative format;
- (f) The location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- (g) The manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;
- (h) The manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code;
- (i) The deadline for public comments on the proposed rule; and
- (j) If negotiated rulemaking was not conducted, an explanation of the agency's determination that negotiated rulemaking was not feasible.

(2) (a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The notice shall be in the form of an official legal notice, as provided for in section 60-105, Idaho Code, and subject to the rates set forth therein.

The notice shall include the agency name and address, rule number, rule subject matter as provided in subsection (1) (b) of this section, and the comment deadline. The notice shall also include a brief statement that informs citizens where they can view the administrative bulletin in electronic form.

(b) The coordinator shall cause the notice required in subsection (2) (a) of this section to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published.

(3) Each agency that has a website shall cause the notice required by either subsection (1) or (2) of this section to be placed onto or be accessible from the home page of the agency's website so that interested persons can view it online.

[(67-5221) 67-5203 added 1965, ch. 273, sec. 3, p. 701; am. 1978, ch. 255, sec. 1, p. 556; am. 1980, ch. 44, sec. 1, p. 73; am. 1980, ch. 212, sec. 1, p. 481; am. 1981, ch. 192, sec. 2, p. 339; am. 1981, ch. 245, sec. 1, p. 489; am. 1983, ch. 4, 1st E.S., sec. 1, p. 23; am. and redesig. 1992, ch. 263, sec. 10, p. 793; am. 1993, ch. 216, sec. 105, p. 674; am. 1993, ch. 245, sec. 3, p. 856; am. 1994, ch. 271, sec. 2, p. 834; am. 1994, ch. 371, sec. 3, p. 1196; am. 1996, ch. 161, sec. 5, p. 534; am. 2005, ch. 129, sec. 1, p. 416; am. 2010, ch. 45, sec. 1, p. 82; am. 2012, ch. 310, sec. 2, p. 857; am. 2013, ch. 284, sec. 1, p. 732.]

67-5222. PUBLIC PARTICIPATION. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall afford all interested persons reasonable opportunity to submit data, views and arguments, orally or in writing. The agency shall receive comments for not less than twenty-one (21) days after the date of publication of the notice of proposed rulemaking in the bulletin.

(2) When promulgating substantive rules, the agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or an agency. The request must be made in writing and be within fourteen (14) days of the date of publication of the notice of proposed rulemaking in the bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later. An opportunity for oral presentation need not be provided when the agency has no discretion as to the substantive content of a proposed rule because the proposed rule is intended solely to comply:

(a) with a controlling judicial decision or court order; or

(b) with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule.

[67-5222, added 1992, ch. 263, sec. 12, p. 797.]

67-5223. INTERIM LEGISLATIVE REVIEW -- STATEMENT OF ECONOMIC IMPACT. (1) After notice of proposed rulemaking is filed with the coordinator, the coordinator, after making technical corrections as authorized in section 67-5202, Idaho Code, shall provide the notice, accompanied by the full text of the rule under consideration in legislative format, as well as a statement of the substance of the intended action, to the director of legislative services. If the proposed rulemaking is based upon a requirement of federal law or regulation, a copy of that specific federal law or regulation shall accompany the submission to the director of legislative services. The director of legislative services shall analyze and refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code.

(2) An agency shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a proposed rule if the germane joint subcommittee files a written request with the agency for such a statement. The statement shall contain an evaluation of the costs and benefits of the rule, including any health, safety, or welfare costs and benefits.

(3) An agency shall prepare for inclusion with the filing of the proposed rule change a statement of economic impact on all proposed rules in which a fee or charge is imposed or increased. The cost/benefit analysis shall include reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs borne by citizens, or the private sector or both. The adequacy of the contents of the statement of economic impact in subsections (1) and (2) of this section is not subject to judicial review and the accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

(4) An agency proposing to adopt amendments to materials previously incorporated by reference in a rule shall prepare for inclusion with the filing of the proposed rule change a brief written synopsis that details the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. This synopsis shall accompany the

submission to the director of legislative services and shall be provided to the germane joint subcommittee created in section 67-454, Idaho Code.

[67-5223, added 1992, ch. 263, sec. 13, p. 797; am. 1994, ch. 271, sec. 3, p. 835; am. 1996, ch. 159, sec. 24, p. 527; am. 1999, ch. 21, sec. 2, p. 30; am. 2008, ch. 183, sec. 2, p. 555; am. 2010, ch. 280, sec. 1, p. 756; am. 2016, ch. 367, sec. 1, p. 1077.]

67-5224. PENDING RULE -- FINAL RULE -- EFFECTIVE DATE. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall consider fully all written and oral submissions respecting the proposed rule.

(2) Subject to the provisions of subsection (3) of this section, the agency shall publish the text of a pending rule and a notice of adoption of the pending rule in the bulletin. The notice of adoption of the pending rule shall consist of a concise explanatory statement containing:

(a) Reasons for adopting the rule;

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

(c) The date on which the pending rule will become final and effective, as provided in subsection (5) of this section, and a statement that the pending rule may be rejected by concurrent resolution of the legislature;

(d) An identification of any portion of the pending rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;

(e) The specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and

(f) Except as otherwise required in paragraph (g) of this subsection, 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 when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule; or

(g) If a notice of proposed rulemaking of the Idaho state tax commission, a specific description of any negative or positive fiscal impact greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule.

(3) With the permission of the coordinator, the agency need not publish in full the text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and note all changes that have been made.

(4) An agency shall not publish a pending rule until at least seven (7) days after the close of all public comment.

(5) (a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

(b) When the legislature approves a pending rule pursuant to section 67-5291, Idaho Code, the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution.

(c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved by concurrent resolution.

(6) Each agency shall provide the administrative rules coordinator with a description of any pending rule or portion thereof imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. The administrative rules coordinator shall provide the legislature with a compilation of the descriptions provided by the agencies.

(7) At the conclusion of the legislative session or as soon thereafter as is practicable, the coordinator shall publish the date upon which the legislature adjourned sine die and rules became effective and a list of final rules becoming effective on a different date, as provided in section 67-5224(5), Idaho Code, and temporary rules remaining in effect as provided in section 67-5226(3), Idaho Code.

[67-5224, added 1992, ch. 263, sec. 14, p. 798; am. 1995, ch. 196, sec. 1, p. 686; am. 1996, ch. 161, sec. 6, p. 535; am. 1999, ch. 20, sec. 1, p. 28; am. 2005, ch. 220, sec. 1, p. 696; am. 2013, ch. 284, sec. 2, p. 733; am. 2014, ch. 191, sec. 1, p. 515.]

67-5225. RULEMAKING RECORD. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall prepare a rulemaking record. The record shall be maintained in the main offices of the agency.

(2) The rulemaking record shall be available for public inspection and copying. The rulemaking record must contain:

(a) copies of all publications in the bulletin;

(b) all written petitions, submissions, and comments received by the agency and the agency's response to those petitions, submissions, and comments;

(c) all written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule;

(d) a record of any oral presentations, any transcriptions of oral presentations, and any memorandum prepared by a presiding officer summarizing the contents of the presentations; and

(e) any other materials or documents prepared in conjunction with the rulemaking.

(3) Except as otherwise required by a provision of law, the rulemaking record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

(4) The record required in this section shall be maintained by the agency for a period of not less than two (2) years after the effective date of the rule.

[67-5225, added 1992, ch. 263, sec. 15, p. 799; am. 1995, ch. 270, sec. 1, p. 869.]

67-5226. TEMPORARY RULES. (1) If the governor finds that:

- (a) Protection of the public health, safety, or welfare; or
- (b) Compliance with deadlines in amendments to governing law or federal programs; or
- (c) Conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule, except as otherwise provided in section 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

(2) A rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective as provided in section 67-5224(5), Idaho Code.

(4) Temporary rules shall be published in the first available issue of the bulletin.

(5) Temporary rules are not subject to the requirements of section 67-5223, Idaho Code, provided that the administrative rules coordinator sends a copy of the temporary rules to the director of the legislative services office.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

[67-5226, added 1992, ch. 263, sec. 16, p. 799; am. 1995, ch. 196, sec. 2, p. 687; am. 1996, ch. 161, sec. 7, p. 536; am. 2000, ch. 203, sec. 2, p. 511; am. 2003, ch. 22, sec. 1, p. 92; am. 2010, ch. 20, sec. 4, p. 36; am. 2014, ch. 191, sec. 2, p. 516.]

67-5227. VARIANCE BETWEEN PENDING RULE AND PROPOSED RULE. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject of agency action and were reasonably able from that notifica-

tion to determine whether their interests could be affected by agency action on that subject.

[67-5227, added 1992, ch. 263, sec. 17, p. 800; am. 1993, ch. 216, sec. 106, p. 675; am. 1996, ch. 161, sec. 8, p. 537.]

67-5228. EXEMPTION FROM REGULAR RULEMAKING PROCEDURES. An agency may amend a pending rule to correct typographical errors, transcription errors, or clerical errors without compliance with regular rulemaking procedures when the amendments are approved by the coordinator. Such amendments become incorporated in the pending rule upon publication in the bulletin.

[67-5228, added 1992, ch. 263, sec. 18, p. 800; am. 1996, ch. 161, sec. 9, p. 537.]

67-5229. INCORPORATION BY REFERENCE. (1) If the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference in its rules and without republication of the incorporated material in full, all or any part of:

- (a) A code, standard or rule adopted by an agency of the United States;
- (b) A code, standard or rule adopted by any nationally recognized organization or association;
- (c) A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or
- (d) A final rule of a state agency; provided however, that a state agency shall not adopt a temporary rule incorporating by reference a rule of that agency that is being or has been repealed unless the rule providing for the incorporation has been reviewed and approved by the legislature.

(2) The agency shall, as part of the rulemaking:

- (a) Include in the notice of proposed rulemaking a brief written synopsis of why the incorporation is needed; and
- (b) Note where an electronic copy can be obtained or provide an electronic link to the incorporated materials that at a minimum will be posted on the agency's website or included in the rule that is published in the administrative code on the website of the office of the administrative rules coordinator; and
- (c) If otherwise unavailable, note where copyrighted or other proprietary materials can be viewed or purchased.

(3) The incorporated material shall be identified with specificity and shall include the date when the code, standard or rule was published, approved or became effective. If the agency subsequently wishes to adopt amendments to previously incorporated material, it shall comply with the rulemaking procedures of this chapter.

(4) Unless prohibited by other provisions of law, the incorporated material is subject to legislative review in accordance with the provisions of section 67-5291, Idaho Code, and shall have the same force and effect as a rule.

[(67-5229) 1980, ch. 212, sec. 2, p. 484; am. and redesignated 1992, ch. 263, sec. 19, p. 800; am. 2000, ch. 203, sec. 1, p. 510.; am. 2010, ch. 280, sec. 2, p. 757.]

67-5230. PETITION FOR ADOPTION OF RULES. (1) Any person may petition an agency requesting the adoption, amendment, or repeal of a rule. The agency shall either:

- (a) deny the petition in writing, stating its reasons for the denial, or
- (b) initiate rulemaking proceedings in accordance with this chapter.

The agency shall deny the petition or initiate rulemaking proceedings in accordance with this chapter within twenty-eight (28) days after submission of the petition, unless the agency's rules are adopted by a multimember agency board or commission whose members are not full-time officers or employees of the state, in which case the agency shall take action on the petition no later than the first regularly scheduled meeting of that board or commission that takes place seven (7) or more days after submission of the petition.

- (2) An agency decision denying a petition is a final agency action.

[(67-5230) 1965, ch. 273, sec. 6, p. 701; am. and redesignated 1992, ch. 263, sec. 21, p. 801; am. 1995, ch. 270, sec. 2, p. 869.]

67-5231. INVALIDITY OF RULES NOT ADOPTED IN COMPLIANCE WITH THIS CHAPTER -- TIME LIMITATION. (1) Rules may be promulgated by an agency only when specifically authorized by statute. A temporary or final rule adopted and becoming effective after July 1, 1993, is voidable unless adopted in substantial compliance with the requirements of this chapter.

(2) A proceeding, either administrative or judicial, to contest any rule on the ground of noncompliance with the procedural requirements of this chapter must be commenced within two (2) years from the effective date of the rule.

[67-5231, added 1992, ch. 263, sec. 22, p. 801; am. 1996, ch. 161, sec. 10, p. 538.]

67-5232. DECLARATORY RULINGS BY AGENCIES. (1) Any person may petition an agency for a declaratory ruling as to the applicability of any statutory provision or of any rule administered by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action.

[(67-5232) 1965, ch. 273, sec. 8, p. 701; am. and redesignated 1992, ch. 263, sec. 23, p. 801.]

67-5240. CONTESTED CASES. A proceeding by an agency, other than the public utilities commission or the industrial commission, that may result in the issuance of an order is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law.

[67-5240, added 1992, ch. 263, sec. 24, p. 802.]

67-5241. INFORMAL DISPOSITION. (1) Unless prohibited by other provisions of law:

- (a) an agency or a presiding officer may decline to initiate a contested case;
- (b) any part of the evidence in a contested case may be received in written form if doing so will expedite the case without substantially prejudicing the interests of any party;
- (c) informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement, or consent order. Informal settlement of matters is to be encouraged;
- (d) the parties may stipulate as to the facts, reserving the right to appeal to a court of competent jurisdiction on issues of law.

(2) An agency or a presiding officer may request such additional information as required to decide whether to initiate or to decide a contested case as provided in subsection (1) of this section.

(3) If an agency or a presiding officer declines to initiate or decide a contested case under the provisions of this section, the agency or the officer shall furnish a brief statement of the reasons for the decision to all persons involved. This subsection does not apply to investigations or inquiries directed to or performed by law enforcement agencies defined in section 74-101(7), Idaho Code.

(4) The agency may not abdicate its responsibility for any informal disposition of a contested case. Disposition of a contested case as provided in this section is a final agency action.

[67-5241, added 1992, ch. 263, sec. 25, p. 802; am. 1993, ch. 216, sec. 107, p. 676; am. 2000, ch. 342, sec. 13, p. 1160; am. 2006, ch. 352, sec. 4, p. 1078; am. 2015, ch. 141, sec. 176, p. 519.]

67-5242. PROCEDURE AT HEARING. (1) In a contested case, all parties shall receive notice that shall include:

- (a) a statement of the time, place, and nature of the hearing;
- (b) a statement of the legal authority under which the hearing is to be held; and
- (c) a short and plain statement of the matters asserted or the issues involved.

(2) The agency head, one (1) or more members of the agency head, or one (1) or more hearing officers may, in the discretion of the agency head, be the presiding officer at the hearing.

(3) At the hearing, the presiding officer:

- (a) Shall regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination as may be necessary.
- (b) Shall afford all parties the opportunity to respond and present evidence and argument on all issues involved, except as restricted by a limited grant of intervention or by a prehearing order.
- (c) May give nonparties an opportunity to present oral or written statements. If the presiding officer proposes to consider a statement by a nonparty, the presiding officer shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the presiding officer shall require the statement to be given under oath or affirmation.

(d) Shall cause the hearing to be recorded at the agency's expense. Any party, at that party's expense, may have a transcript prepared or may cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(e) May conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) If a party fails to attend any stage of a contested case, the presiding officer may serve upon all parties notice of a proposed default order. The notice shall include a statement of the grounds for the proposed order. Within seven (7) days after service of the proposed order, the party against whom it was issued may file a written petition requesting the proposed order to be vacated. The petition shall state the grounds relied upon. The presiding officer shall either issue or vacate the default order promptly after

the expiration of the time within which the party may file a petition. If the presiding officer issues a default order, the officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party.

[(67-5242) 1965, ch. 273, sec. 9, p. 701; am. and redesignated 1992, ch. 263, sec. 26, p. 802.]

67-5243. ORDERS NOT ISSUED BY AGENCY HEAD. (1) If the presiding officer is not the agency head, the presiding officer shall issue either:

(a) A recommended order, which becomes a final order only after review by the agency head in accordance with section 67-5244, Idaho Code; or

(b) A preliminary order, which becomes a final order unless reviewed in accordance with section 67-5245, Idaho Code.

(2) The order shall state whether it is a preliminary order or a recommended order.

(3) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the service date of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition.

[67-5243, added 1992, ch. 263, sec. 27, p. 804; am. 2010, ch. 255, sec. 1, p. 646.]

67-5244. REVIEW OF RECOMMENDED ORDERS. (1) A recommended order shall include a statement of the schedule for review of that order by the agency head or his designee. The agency head shall allow all parties to file exceptions to the recommended order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(2) Unless otherwise required, the agency head shall either:

(a) issue a final order in writing within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties or for good cause shown;

(b) remand the matter for additional hearings; or

(c) hold additional hearings.

(3) The agency head on review of the recommended decision shall exercise all the decision-making power that he would have had if the agency head had presided over the hearing.

[67-5244, added 1992, ch. 263, sec. 28, p. 804.]

67-5245. REVIEW OF PRELIMINARY ORDERS. (1) A preliminary order shall include:

(a) A statement that the order will become a final order without further notice; and

(b) The actions necessary to obtain administrative review of the preliminary order.

(2) The agency head, upon his own motion may, or, upon motion by any party shall, review a preliminary order, except to the extent that:

(a) Another statute precludes or limits agency review of the preliminary order; or

(b) The agency head has delegated his authority to review preliminary orders to one (1) or more persons.

(3) A petition for review of a preliminary order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within fourteen (14) days after the service date of the preliminary order unless a different time is required by other provision of law. If the agency head on his own motion decides to review a preliminary order, the agency head shall give written notice within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provisions of law. The fourteen (14) day period for filing of notice is tolled by the filing of a petition for reconsideration under section 67-5243(3), Idaho Code.

(4) The basis for review must be stated on the petition. If the agency head on his own motion gives notice of his intent to review a preliminary order, the agency head shall identify the issues he intends to review.

(5) The agency head shall allow all parties to file exceptions to the preliminary order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(6) The agency head shall:

(a) Issue a final order in writing, within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties, or for good cause shown;

(b) Remand the matter for additional hearings; or

(c) Hold additional hearings.

(7) The head of the agency or his designee for the review of preliminary orders shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing.

[67-5245, added 1992, ch. 263, sec. 30, p. 805; am. 2010, ch. 255, sec. 2, p. 647.]

67-5246. FINAL ORDERS -- EFFECTIVENESS OF FINAL ORDERS. (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) The petition for reconsideration is disposed of; or

(b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

[67-5246, added 1992, ch. 263, sec. 31, p. 806; am. 2010, ch. 255, sec. 3, p. 647.]

67-5247. EMERGENCY PROCEEDINGS. (1) An agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. The agency shall take only such actions as are necessary to prevent or avoid the immediate danger that justifies the use of emergency contested cases.

(2) The agency shall issue an order, including a brief, reasoned statement to justify both the decision that an immediate danger exists and the decision to take the specific action. When appropriate, the order shall include findings of fact and conclusions of law.

(3) The agency shall give such notice as is reasonable to persons who are required to comply with the order. The order is effective when issued.

(4) After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(5) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency contested cases or for judicial review thereof.

[67-5247, added 1992, ch. 263, sec. 32, p. 806.]

67-5248. CONTENTS OF ORDERS. (1) An order must be in writing and shall include:

(a) A reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings.

(b) A statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief.

(2) Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding.

(3) All parties to the contested case shall be served with a copy of the order. The order shall be accompanied by proof of service stating the service date, each party who was served and the method(s) of service.

[(67-5248) 1965, ch. 273, sec. 12, p. 701; am. and redesignated 1992, ch. 263, sec. 33, p. 307; am. 2010, ch. 255, sec. 4, p. 648.]

67-5249. AGENCY RECORD. (1) An agency shall maintain an official record of each contested case under this chapter for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law.

(2) The record shall include:

- (a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;
- (b) evidence received or considered;
- (c) a statement of matters officially noticed;
- (d) offers of proof and objections and rulings thereon;
- (e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;
- (f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and
- (g) any recommended order, preliminary order, final order, or order on reconsideration.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in contested cases under this chapter or for judicial review thereof.

[67-5249, added 1992, ch. 263, sec. 34, p. 807.]

67-5250. INDEXING OF PRECEDENTIAL AGENCY ORDERS -- INDEXING OF AGENCY GUIDANCE DOCUMENTS. (1) Unless otherwise prohibited by any provision of law, each agency shall index all written final orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. The orders shall be indexed by name and subject.

A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

(2) Unless otherwise prohibited by any provision of law, each agency shall index by subject all agency guidance documents. The index and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, "agency guidance" means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority.

[(67-5250) 1965, ch. 273, sec. 2, p. 701; am. 1980, ch. 204, sec. 1, p. 468; am. and redesignated 1992, ch. 263, sec. 35, p. 808; am. 1993, ch. 216, sec. 108, p. 676; am. 1995, ch. 270, sec. 3, p. 870.]

67-5251. EVIDENCE -- OFFICIAL NOTICE. (1) The presiding officer may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

(2) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interests of any party.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(4) Official notice may be taken of:

- (a) any facts that could be judicially noticed in the courts of this state; and
- (b) generally recognized technical or scientific facts within the agency's specialized knowledge.

Parties shall be notified of the specific facts or material noticed and the source thereof, including any staff memoranda and data. 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 noticed. Parties must be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed. When the presiding officer proposes to notice staff memoranda or reports, a responsible staff member shall be made available for cross-examination if any party so requests.

(5) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

[(67-5251) 1965, ch. 273, sec. 10, p. 701; am. and redesignated 1992, ch. 263, sec. 36, p. 808.]

67-5252. PRESIDING OFFICER -- DISQUALIFICATION. (1) Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

- (a) within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or
- (b) promptly upon discovering facts establishing grounds for disqualification, whichever is later.

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

(3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination.

(4) Where disqualification of the agency head or a member of the agency head would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest under the provisions of section 74-404, Idaho Code.

(5) Where a decision is required to be rendered within fourteen (14) weeks of the date of a request for a hearing by state or federal statutes or rules and regulations, no party shall have the right to a disqualification without cause.

[67-5252, added 1992, ch. 263, sec. 37, p. 809; am. 1993, ch. 216, sec. 109, p. 677; am. 2015, ch. 141, sec. 177, p. 519.]

67-5253. EX PARTE COMMUNICATIONS. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication.

[(67-5253) 1965, ch. 273, sec. 13, p. 701; am. and redesignated 1992, ch. 263, sec. 38, p. 810.]

67-5254. AGENCY ACTION AGAINST LICENSEES. (1) An agency shall not revoke, suspend, modify, annul, withdraw or amend a license, or refuse to renew a license of a continuing nature when the licensee has made timely and sufficient application for renewal, unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

(2) When a licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by a reviewing court.

(3) This section does not preclude an agency from:

(a) taking immediate action to protect the public interest in accordance with section 67-5247, Idaho Code; or

(b) adopting rules, otherwise within the scope of its authority, pertaining to a class of licensees, including rules affecting the existing licenses of a class of licensees.

[(67-5254) 1965, ch. 273, sec. 14, p. 701; am. and redesignated 1992, ch. 263, sec. 39, p. 810.]

67-5255. DECLARATORY RULINGS BY AGENCIES. (1) Any person may petition an agency for a declaratory ruling as to the applicability of any order issued by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action.

[67-5255, added 1992, ch. 263, sec. 40, p. 811.]

67-5270. RIGHT OF REVIEW. (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

(3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

[67-5270, added 1992, ch. 263, sec. 42, p. 811.]

67-5271. EXHAUSTION OF ADMINISTRATIVE REMEDIES. (1) A person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter.

(2) A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency action would not provide an adequate remedy.

[67-5271, added 1992, ch. 263, sec. 43, p. 812.]

67-5272. VENUE -- FORM OF ACTION. (1) Except when required by other provision of law, proceedings for review or declaratory judgment are instituted by filing a petition in the district court of the county in which:

- (a) the hearing was held; or
- (b) the final agency action was taken; or
- (c) the aggrieved party resides or operates its principal place of business in Idaho; or
- (d) the real property or personal property that was the subject of the agency decision is located.

(2) When two (2) or more petitions for judicial review of the same agency action are filed in different counties or are assigned to different district judges in the same county, upon motion filed by any party to any of the proceedings for judicial review of the same agency action, the separate consideration of the petitions in different counties or by different district judges shall be stayed. The administrative judge in the judicial district in which the first petition was filed, after appropriate consultation with the affected district judges and the affected administrative judges, shall then order consolidation of the judicial review of the petitions before one (1) district judge in one (1) county in which a petition for judicial review was properly filed, at which time the stay shall be lifted.

[67-5272, added 1992, ch. 263, sec. 44, p. 812; am. 1995, ch. 270, sec. 4, p. 870.]

67-5273. TIME FOR FILING PETITION FOR REVIEW. (1) A petition for judicial review of a temporary or final rule may be filed at any time, except as limited by section 67-5231, Idaho Code.

(2) A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under section 67-5271(2), Idaho Code, must be filed within twenty-eight (28) days of the service date of the final order, the date when the preliminary order became final, or the service date of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within twenty-eight (28) days after the service date of the decision thereon. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

[67-5273, added 1992, ch. 263, sec. 45, p. 812; am. 1993, ch. 216, sec. 110, p. 677; am. 1995, ch. 270, sec. 5, p. 871; am. 1996, ch. 161, sec. 11, p. 538; am. 2010, ch. 255, sec. 5, p. 648.]

67-5274. STAY. The filing of the petition for review does not itself stay the effectiveness or enforcement of the agency action. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

[67-5274, added 1992, ch. 263, sec. 46, p. 812.]

67-5275. AGENCY RECORD FOR JUDICIAL REVIEW. (1) Within forty-two (42) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the agency record. The agency record shall consist of:

(a) the record compiled under section 67-5225, Idaho Code, when the agency action was a rule;

(b) the record compiled under section 67-5249, Idaho Code, when the agency action was an order; or

(c) any agency documents expressing the agency action when the agency action was neither an order nor a rule.

(2) By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

(3) The court may require corrections to the record.

[67-5275, added 1992, ch. 263, sec. 47, p. 813.]

67-5276. ADDITIONAL EVIDENCE. (1) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action, and that:

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional factfinding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

(2) The agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court.

[67-5276, added 1992, ch. 263, sec. 48, p. 813.]

67-5277. JUDICIAL REVIEW OF ISSUES OF FACT. Judicial review shall be conducted by the court without a jury. Unless otherwise provided by statute, judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter, supplemented by additional evidence taken pursuant to section 67-5276, Idaho Code.

[67-5277, added 1992, ch. 263, sec. 49, p. 813.]

67-5278. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES. (1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court, if it is alleged that the rule, or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner.

(2) The agency shall be made a party to the action.

(3) A declaratory judgment may be rendered whether or not the petitioner has requested the agency to pass upon the validity or applicability of the rule in question.

[67-5278, added 1965, ch. 273, sec. 7, p. 701; am. and redesignated 1992, ch. 263, sec. 50, p. 814.]

67-5279. SCOPE OF REVIEW -- TYPE OF RELIEF. (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; or
- (d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

[67-5279, added 1992, ch. 263, sec. 51, p. 814.]

67-5291. LEGISLATIVE REVIEW OF RULES. (1) The standing committees of the legislature may review temporary, pending and final rules which have been published in the bulletin or in the administrative code. If reviewed, the standing committee which reviewed the rules shall report to the membership of the body its findings and recommendations concerning its review of the rules. If ordered by the presiding officer, the report of the committee shall be printed in the journal. A concurrent resolution may be adopted approving the rule, in whole or in part, or rejecting the rule where it is determined that the rule, or part of the rule, is not consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement or enforce, or where it is determined that any rule, or part of a rule, previously promulgated and reviewed by the legislature shall be deemed not to be consistent with the legislative intent of the statute the rule was written to interpret, prescribe, implement or enforce. The rejection of a rule, or part of a rule, by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsi-

bility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve or reject, in whole or in part, an agency rule and to transmit a copy of the concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of a new rule. If a rule, or part of a rule, has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and effect until the same is rejected by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms.

(2) For purposes of this section, "part of a rule" means a provision in a rule that is designated either numerically or alphabetically or the entirety of any new or amended language contained therein.

[(67-5291) 67-5218, added 1969, ch. 48, sec. 2, p. 125; am. 1976, ch. 185, sec. 2, p. 672; am. 1979, ch. 104, sec. 1, p. 251; am. 1979, ch. 112, sec. 1, p. 357; am. 1981, ch. 243, sec. 1, p. 486; am. 1985, ch. 13, sec. 2, p. 19; am. 1990, ch. 22, sec. 1, p. 33; am. and redesig. 1992, ch. 263, sec. 53, p. 815; am. 1995, ch. 196, sec. 3, p. 688; am. 1996, ch. 161, sec. 12, p. 538; am. 2014, ch. 191, sec. 3, p. 516; am. 2017, ch. 3, sec. 2, p. 4.]

67-5292. EXPIRATION OF ADMINISTRATIVE RULES. (1) Notwithstanding any other provision of this chapter to the contrary, every rule adopted and becoming effective after June 30, 1990, shall automatically expire on July 1 of the following year unless the rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

(2) All rules adopted prior to June 30, 1990, shall expire on July 1, 1991, unless extended by statute. Thereafter, any rules which are extended shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each succeeding year.

(3) This section is a critical and integral part of this chapter. If any portion of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall be deemed to affect all rules adopted subsequent to the effective date of this act and such rules shall be deemed null, void and of no further force and effect.

[(67-5292) 67-5219, added 1990, ch. 22, sec. 2, p. 34; am. and redesig. 1992, ch. 263, sec. 54, p. 815; am. 1996, ch. 161, sec. 13, p. 539; am. 2014, ch. 191, sec. 4, p. 517.]