

NEGOTIATED RULEMAKING 62-0101-2501

PRE-NEGOTIATED RULEMAKING DRAFT (June 2, 2025)

TABLE OF CONTENTS

SUBCHAPTER C – CONTESTED CASE PARTICIPANTS (RULES 200-299)

225. ~~Initial~~ Pleading – Listing Of, And Service Upon, Representatives (Rule 225)

SUBCHAPTER F – HEARINGS (RULES 500-599)

500. Notice Of Hearing (Rule 500)

501. ~~h~~How Hearings Held (Rule 501).

002. DEFINITIONS (RULE 2).

All terms used in this Chapter shall be interpreted in accordance with the definitions set forth in the Idaho Administrative Procedure Act (“APA”) within Section 67-5201, Idaho Code, and as otherwise defined below:

01. Agency. In addition to the definition in Section 67-5201(42), Idaho Code, reference to the “agency” in these rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, administrative law judge or contract hearing officer assigned by the Office of Administrative Hearings to serve as a hearing officer in a contested case proceeding, or other such presiding officer, as context requires. In turn, reference to the “agency head” means the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders.

02. Interlocutory Order. Any order issued by a presiding officer or agency head which is neither a preliminary order, a recommended order, nor a final order.

~~03. Presiding Officer. One (1) or more members of the agency board or commission, the agency head, or duly appointed hearing officer(s) who are authorized by statute or rule to preside at a contested case hearing. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer.~~

034. Service or Serving. The agency’s or a party’s delivery or distribution of official documents in a legally sufficient manner in a contested case proceeding to the parties to that proceeding and, if applicable, to any other persons required by statute, rule, order, or notice to receive official documents.

004. LIBERAL CONSTRUCTION (RULE 4). The rules in this chapter will be liberally construed to secure the just, speedy, and inexpensive determination of contested cases proceedings. Unless required by statute or otherwise permitted by rule, the Idaho Rules of Civil Procedure and

the Idaho Rules of Evidence do not apply to contested case proceedings; but may be used to inform decisions by a presiding officer.

010. PRACTICE NOT COVERED BY STATUTE OR RULES (RULE 10). In cases where no provision is made by statute or by these rules, proceedings in contested cases to which these rules apply shall be in accordance with the practice usually followed in such or similar contested cases, or as may be prescribed by the hearing officer or stipulated to by the parties. [To be revised]

011. USE OF ARTIFICIAL INTELLIGENCE BY PARTIES (RULE 11).

01. Definition of Generative Artificial Intelligence. Generative Artificial Intelligence (Generative AI) is a class of computer software and systems, or functionality within systems, that use large language models, algorithms, deep-learning, and machine learning models, and are capable of generating new content, including but not limited to text, images, video, and audio, based on patterns and structures of input data. These also include systems capable of ingesting input and translating that input into another form, such as text-to-code systems.

02. Use of Generative Artificial Intelligence. At any time during a contested case proceeding, a presiding officer is permitted to request disclosure statements from any party regarding the party's use of generative artificial intelligence in the preparation of briefing and other written submissions. The decision whether to request such disclosure statements, and for which submissions, is solely within the discretion of the presiding officer.

03. Artificial Intelligence-Generated Evidence. Where the output of a process or system would be subject to Rule 485 if testified to by a human witness, the presiding officer must find that the output satisfies the requirements of Rule 485. This rule does not apply to the output of basic scientific instruments or routinely relied upon commercial software.

04. Challenges to Artificial Intelligence-Generated Evidence. If a party challenging the authenticity of artificial intelligence-generated evidence demonstrates to the presiding officer that they reasonably could find that the evidence has been fabricated, in whole or in part, by artificial intelligence, the evidence is admissible only if the proponent demonstrates to the presiding officer that it is, more likely than not, authentic.

05. Other uses. The use of any other artificial intelligence by parties in contested case proceedings, including, but not limited to, the use of artificial intelligence avatars in arguments, shall be permitted only upon advance notice to the presiding officer who, in their sole discretion, may limit or refuse such usage.

012. ORDERS GENERATED WITH ARTIFICIAL INTELLIGENCE (RULE 12). Orders written in whole or, in part, by utilizing generative artificial intelligence (as defined in Rule 11) shall contain the following statement in the body of the order: "This Order has been generated with the use of generative artificial intelligence."

227. REPRESENTATION OF PARTIES (RULE 227). Parties may be represented by an attorney throughout the proceedings in a contested case, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. Persons appearing in contested case proceedings in a representative capacity must conform to the standards of professional conduct required of attorneys before the courts of Idaho. If any representative fails to conform to these standards, the presiding officer may exclude the person from the proceeding. [To be revised]

228. ATTORNEY REPRESENTATIVES (RULE 228). Attorneys representing a party in a contested case proceeding must have an active license to practice law in the state of Idaho. Attorneys not licensed in Idaho but who are licensed in one or more other states may request admission to the proceeding on a pro hac vice status by the presiding officer consistent with Idaho State Bar Commission Rule 227(i) “Agency Admission.” [To be revised]

251. DISQUALIFICATION (RULE 251).

01. Petitions – Determination. Upon any petition to disqualify a presiding officer, the presiding officer may request additional briefing or argument from any party to the contested case proceeding, or may otherwise immediately rule upon the petition on its face without additional briefing or argument.

02. Timeline. A petition to disqualify a presiding officer must be filed within fourteen (14) days after notice of the basis of disqualification is made known and/or disclosed.

032. Voluntary Disqualification. A presiding officer in a contested case may make a voluntary disqualification without stating any reason therefor.

253. CHALLENGES TO STATUTES (RULE 253). A presiding officer in a contested case has no authority to declare a statute unconstitutional. If a court with binding authority in the state of Idaho has declared a statute unconstitutional—or if a federal authority has preempted a statute or rule—and that same statute, rule, or a substantively identical one is challenged in a proceeding before the hearing officer, then the hearing officer must apply the court’s precedent or the federal preemption and decide the matter accordingly.

254. CHALLENGES TO RULES (RULE 254). An agency head, acting either as a presiding officer or in issuing a final order, may consider and decide whether a rule of that agency is within the agency’s substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. A presiding officer, other than an agency head, does not have the authority to consider and decide such issues except upon express written grant of authority by the agency head. [To be revised]

325. MOTIONS — DEFINED — FORM AND CONTENTS — TIME FOR FILING (RULE 325).

01. Motions Defined. All other requests for the presiding officer to take any other action in a contested case are called “motions.”

02. Form and Contents. Motions should:

- a. Be in writing, and comply with the same form requirements as pleadings;
- b. Not exceed twenty-five (25) pages for dispositive motions, or ten (10) pages for any other motion, except as authorized by the presiding officer;
- c. Fully state the facts upon which they are based;
- d. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based;~~and~~
- e. Include any affidavits, declarations, exhibits, and attachments intended to support the motion, which do not count towards any page limitation, except as otherwise directed by the presiding officer; and
- f. State the relief sought.

03. Oral Argument. If the moving party desires oral argument on the motion, it must state so in the motion, including whether it is requested to be in-person or by remote means. All motions seeking dispositive relief shall be set for oral argument; all other motions may be decided on briefing without ~~further~~ oral argument, in the presiding officer’s discretion.

04. Time for Filing. Except as otherwise directed by statute, rule, or order of the presiding officer, motions may be filed at any time during a contested case proceeding.

05. Oppositions to Motions. An opposition to a motion may be filed by any party in the proceedings using the same form and content requirements as the motion being opposed. Unless otherwise directed by the presiding officer, any opposition to a motion must be filed within fourteen (14) days after service of the motion. Reply briefs and further briefing on the motion shall be permitted only upon request of the presiding officer.

06. Determination of Motions.

- a. Dispositive Motions. Any ruling on a dispositive motion shall be in writing. The presiding officer may suspend all deadlines, including the evidentiary hearing date, during the consideration of a dispositive motion.
- b. Other Motions. Except as otherwise directed by statute, rule, or these rules, a ruling on any other motion may be presented orally by the presiding officer. The presiding officer may direct any party to submit a proposed order regarding an oral ruling.

326. SPECIAL MOTIONS (RULE 326). [To be revised]

01. Interlocutory Motions for Reconsideration. Motions for reconsideration are permitted for any interlocutory order issued by a presiding officer, but any such motion for reconsideration must be filed within fourteen (14) days of the issuance of the order for which reconsideration is sought. The presiding officer may, in their discretion, rule upon a motion for reconsideration with or without additional briefing, and with or without conference.

02. Motions for Permissive Appeal. Motions for permissive appeal are permitted for any interlocutory order issued by a presiding officer, subject to the deadlines and procedure set forth in Idaho Appellate Rule 12, "Appeal By Permission."

327. STAY OF AGENCY ACTION (RULE 327). Unless otherwise governed by law, at the discretion of the presiding officer, or upon a party's request, an agency order may be stayed pending resolution of the contested case. Upon completion of the contested case, if the agency action is affirmed, in whole or in part, the presiding officer shall lift the stay of the agency action.

328. MOTION TO SEAL PROCEEDINGS (RULE 328). [To be drafted]

3297. – 349. (RESERVED)

425. DEFAULT (RULE 425). A presiding officer may enter a notice of a proposed default order~~intent to default order~~ against any party pursuant to the provisions of Section 67-5242A, Idaho Code. A party who has indicated that its case presentation will be limited to a written submission will not be defaulted, and the presiding officer may complete the adjudication without that party's further participation.

01. Procedure if No Petition to Vacate is Filed. If no timely petition to vacate is filed by the party subject to a proposed default order, the presiding officer should issue ~~or vacate~~ the default no later than three (3) days after the expiration of the time within which the party could have filed the petition, or otherwise as promptly as possible, except where a shorter period is directed by law.

02. Procedure Upon Filing of a Petition to Vacate. Upon the timely filing of a petition to vacate by a party subject to a proposed default order, the presiding officer may request additional briefing from the parties, and may also set a conference for argument regarding the proposed default order. Whether additional briefing and/or argument is accepted, the presiding officer should issue or vacate the default no later than fourteen (14) days after the petition to vacate is filed, except where a shorter period is directed by law.

03. Procedure After Default. Upon the issuance of a default order, the presiding officer ~~shall~~may set a conference with the non-defaulting party to determine which remaining proceedings, if any, are still needed to complete the adjudication. Such conference should be held as soon as practicable after the issuance of the default order.

04. Notices to Defaulting Party. While the defaulting party shall not participate in any remaining proceedings, the presiding officer shall direct that all subsequent filings, including all

orders issued in the contested case proceeding, continue to be served on the defaulting party by the most appropriate means, as determined by the presiding officer.

426. CONTINUANCE IN LIEU OF DEFAULT (RULE 426). A presiding officer may, in the interest of due process and on their own motion, decline to issue a notice of a proposed default order, and instead make a reasonable continuance of the proceedings. If the same party subsequently fails to attend any stage of the continued proceedings, a notice of a proposed default order must be issued. [To be revised]

427. APPEARANCE AT HEARING (RULE 427). A party will be deemed to have appeared if present at the time and place of the properly noticed hearing within fifteen (15) minutes of the scheduled hearing time.

428. INACTIVE CASES (RULE 428). Absent a showing of good cause, and at the sole discretion of the presiding officer, a case in which no action has been taken for a period of six (6) months will be dismissed. The parties shall receive fourteen (14) day's notice prior to any dismissal.

4297. – 449. (RESERVED)

Rules 475 through 499 – Evidence 475.

487. ADVERSE INFERENCE (RULE 487). The presiding officer, in their sole discretion, may draw an adverse inference when a party or witness fails to produce requested evidence, including testimony, which is or was reasonably in the party or witness's control, provided that the party is provided advance notice and an opportunity to respond.:

4887. – 499. (RESERVED)

450. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 450).

01. Discovery, Generally. Parties are encouraged to informally exchange information and documentation which will aid in the just, speedy, and inexpensive disposition of the proceeding. Except where prohibited by statute or rule, discovery may be conducted as agreed between the parties, ~~or as where ordered by the presiding officer, on their own initiative, or where requested by the parties and ordered by the presiding officer.~~ The presiding officer may, in their discretion, limit any discovery on the grounds that it:

- a. Does not appear relevant;
- b. Appears unduly repetitious;
- c. Violates any constitutional, statutory, or regulatory provisions;
- d. Violates any privilege provided by statute or recognized by the courts of Idaho;

- e. Appears to be made in bad faith;
- f. Is not proportional to the needs of the proceeding; and/or
- g. Otherwise exceeds the permitted scope of discovery as defined in these rules.

02. Kinds and Scope - Rules of Civil Procedure. Unless otherwise provided by statute, rule, order, or notice, when discovery is authorized before the agency, the kinds and scope of discovery is governed by the Idaho Rules of Civil Procedure, subject to any limitations established by the presiding officer.

453. SUBPOENAS (RULE 453).

Pursuant to Section 67-5251A, Idaho Code-, and as authorized by statute or rule, ~~The~~ presiding officer may issue subpoenas, ~~as authorized by statute or rule,~~ upon a party's motion or upon the presiding officer's own initiative. A subpoena may command the person to whom it is directed to appear to give testimony at an evidentiary hearing, any other hearing, or a deposition at a specified time and place. A subpoena that commands a person to produce or to permit inspection and copying of documents, electronically stored information or tangible things, or to permit inspection of premises, may be joined with a command to appear at an evidentiary hearing, any other hearing, or a deposition, or may be issued separately. Any party, or person upon whom the subpoena has been served, may move to quash a subpoena prior to the deadline for compliance with the subpoena.

456. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 456).

The presiding officer may impose all sanctions recognized by statute or rule, including the rules of civil procedure, for failure to comply with an order compelling discovery or a duly-issued subpoena. [To be revised]

501. HOW HEARINGS HELD (RULE 501).

01. Location.-Hearings may be held in person, by telephone, or by other remote technology, as agreed by the parties. If the parties are unable to agree how a hearing will be held, the presiding officer shall decide, based upon considerations of: locations of the parties; locations of any witnesses; agreements regarding the admission of prepared testimony or other evidence; complexity of the dispute; limitations in suitability of telephone or remote technology for one or more parties; and any other factor impacting the just, speedy, and inexpensive determination of the proceeding. However a hearing is held, all participants shall be afforded an opportunity to participate in the entire proceeding while it is taking place.

02. Costs. If the hearing is held in-person, the agency shall pay the costs of the facility rental fee and all recording fees, including any court reporter appearance fee.

515. VIEW OF PREMISES, PROPERTY, OR THINGS (RULE 515).

01. A presiding officer may order that the presiding officer view any property, place, item, or circumstance relevant to the action. Such a view may be conducted at any time in a contested case, and must be conducted personally by the presiding officer after notice to all parties. All parties have the right to be present at any view by the presiding officer.

02. Photographs or recordings of the view may be admitted as evidence upon motion by any party or by the presiding officer's own motion.

5165. – 599. (RESERVED)

601. RECORDING OR REPORTING OF HEARINGS (RULE 601).

01. In-Person, Remote Video, and Telephonic Hearings. All ~~in-person and telephonic~~ hearings shall be recorded at the agency's expense, either by audiotape, digital audio, and/or court reporter, as selected by the presiding officer. Any party requesting a video recording of an in-person ~~or telephonic~~ hearing may do so at their own expense, subject to the presiding officer's determination that the recording does not cause distraction or disruption, which determination may be made at any time before or during the hearing.

~~02. Remote Video Hearings. All remote video hearings shall be recorded at the agency's expense, by digital audio, digital video, and/or court reporter, as selected by the presiding officer.~~

023. Transcripts. Any party may request an official transcript of any recording of any hearing at their own expense. However, if a party uses an official transcript for any purpose in the contested case proceeding, the full official transcript must be provided to all parties and the presiding officer. If a party is required to provide a copy of an official transcript to all parties and the presiding officer, the presiding officer may, in their discretion, direct all other parties to contribute to the expense of the official transcript.

034. Presiding Officers. In preparing any order, a presiding officer may rely upon any unofficial transcript of a hearing, including, but not limited to, any transcript automatically generated by computer software. If the presiding officer determines that an unofficial transcript of a hearing is incomplete or insufficient, or otherwise determines that an official transcript is required for any other reason, the presiding officer may direct the creation of an official transcript at the agency's expense. If the agency is not a party to the proceeding, the presiding officer may direct the creation of an official transcript at the parties' shared expense.

625. RECOMMENDED ORDERS (RULE 625).

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. Content. Except where otherwise provided by statute or rule, every recommended order must contain the following paragraphs or substantially similar paragraphs:

a. This is a recommended order ~~by~~of the presiding officer. It will not become final without action of the agency head. If you disagree with this recommended order, you may file a “motion for reconsideration” with the presiding officer, ~~or you may file “exceptions” with the agency head. You are allowed to file both.~~

b. If you would like to file a motion for reconsideration of this recommended order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied.

c. If another party has filed a motion for reconsideration of this recommended order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it.

~~d. You may also file any exceptions you may have to this recommended order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline.~~

~~e. If another party has filed exceptions to this recommended order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it.~~

~~df. If you would like to request oral argument regarding any motion for reconsideration or exceptions, you must state so in your filings. The decision whether to have oral argument is at the sole discretion of a decision for the presiding officer or the agency head to make, and they may decide to not have oral argument, even if you or any other party has requested it.~~

03. Content if Reconsideration is Not Permitted or Feasible. Where statute or rule does not permit a motion for reconsideration, or otherwise renders a motion for reconsideration not feasible (e.g., insufficient time), the recommended order must contain the following ~~paragraphs~~language or substantially similar ~~paragraphs~~language:

a. This is a recommended order ~~by~~of the presiding officer. It will not become final without action of the agency head. ~~If you disagree with this recommended order, you may file “exceptions” with the agency head.~~ Motions for reconsideration filed with the presiding officer will not be considered.

~~b. You may file any exceptions you may have to this recommended order, with a supporting brief, directly with the agency head within [number of days for which the governing statute or rule would sufficiently allow for submission of exceptions and consideration thereof in advance of a final order, as determined by the presiding officer]~~

~~days from the service date of this recommended order, unless the agency head sets a different deadline.~~

~~c. If another party has filed exceptions to this recommended order with the agency head, you must file any opposition brief within [number of days for which the governing statute or rule would sufficiently allow for submission of responses to exceptions and consideration thereof in advance of a final order, as determined by the presiding officer] days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it.~~

~~d. Oral arguments will not be allowed unless requested by the agency head.~~

04. Service of Recommended Orders. All recommended orders must be served on all parties contemporaneously with the issuance of the recommended order.

627. FINAL ORDERS (RULE 627).

01. Definition. Final orders are preliminary orders that have become final under Rule 626 and Section 67-5245, Idaho Code, or orders issued by the agency head, either as the presiding officer or in regards to a recommended order, pursuant to Section 67-5246, Idaho Code or as otherwise provided by law. ~~Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the agency will not issue further orders or conduct further proceedings in the matter.~~

750. SERVICE OF EMERGENCY ORDER (RULE 750).

Orders issued as the result of an emergency proceeding under Section 67-5247, Idaho Code, shall be served upon all persons required to comply with the order by both certified mail, return receipt requested, and additionally by e-mail or personal service, where feasible. [To be revised]

751. HEARING ON EMERGENCY ORDER (RULE 751).

01. Time for Hearing. The hearing upon an emergency order shall be held no later than twenty-eight (28) days after the issuance of the emergency order, except as otherwise provided by statute, rule, or order.

02. Appointment of Presiding Officer. No later than three (3) days after the issuance of the emergency order, the agency shall assign the matter to the Office of Administrative Hearings, or, where otherwise authorized by statute or rule, appoint a presiding officer.

03. Notice of Proposed Hearing. As quickly as feasible, the presiding officer shall issue a notice of proposed hearing date.

a. Service. The notice of hearing shall be served upon all persons required to comply with the order by both certified mail, return receipt requested, and additionally by e-mail or personal service, where feasible. The agency may be served by e-mail or regular mail.

b. Content. Except as otherwise provided by statute or rule, the notice of proposed hearing date must contain the following paragraphs or substantially similar paragraphs:

i. You have a right to have an evidentiary hearing before the agency as quickly as feasible if you wish to contest the Emergency Order dated [insert date of order]. Any hearing will be conducted as a contested case hearing pursuant to Chapter 52, Title 67 of the Idaho Code.

ii. ~~Pursuant to Section 67-5252, Idaho Code, the~~ The presiding officer shall, at the time of hearing:

(1) 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, and

(2) 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 a prehearing order.

iii. The hearing date identified in this notice is a proposed hearing date. If you would like to request a different date, you may contact the presiding officer identified in this notice within seven (7) days of receiving this notice. You may contact the presiding officer to make your request by phone, e-mail, or by formal filing with the presiding officer. If you do not timely request a different date, the hearing will be held on the date proposed in this notice.

04. Request for Alternative Hearing Date. Within seven (7) days of receipt of the notice of proposed hearing, any party can request an alternative hearing date, for a date sooner or later than proposed. Such request may be made to the presiding officer informally, via e-mail or telephone. The presiding officer shall hold a conference as soon as practicable with all parties to select a new date.

05. Regular Proceedings Permitted. Although the hearing upon an emergency order shall be treated as an appeal of an agency order, any party participating therein shall be entitled to any discovery, presentation of evidence, or other contested case activities as would have been afforded as if the emergency order had not been issued.

06. Stay. Motions requesting stay of the emergency order are permitted; however, no stay may be granted by the presiding officer except upon stipulation by the agency to the stay and any terms governing the stay.

800. OTHER AGENCY-SPECIFIC CONTESTED CASE RULES (RULE 800).

01. Mandatory Application. Some agencies have promulgated their own contested case rules to comply with applicable federal law or specific requirements of Idaho law applicable to the

agency or programs it administers. The presiding officer shall adopt and apply any such agency-specific rules, including temporary rules. Agency-specific rules which were promulgated as alternative procedures to the prior Idaho Rules of Administrative Procedure of the Attorney General shall continue to be adopted and applied, except as may conflict with any of these Idaho Rules of Administrative Procedure. Previously-promulgated alternative procedures which conflict with these Idaho Rules of Administrative Procedure, but which are otherwise mandated by federal or state statute, rule, regulation, or binding state or federal judicial decisional authority, shall be adopted and applied notwithstanding these Idaho Rules of Administrative Procedure.

02. Optional Application. Agency-specific contested case procedures may also be reflected in agency policies, procedures, or other non-rule guidance. Upon ~~request of the agency~~ motion of a party or upon their own motion, no later than the initial scheduling conference, or at the discretion of the Presiding Officer, the presiding officer may adopt and apply such agency-specific policies, procedures, or other non-rule guidance, provided that such policies, procedures, or other non-rule guidance are publicly-available pursuant to Section 67-5250, Idaho Code; however, any such policies, procedures, or non-rule guidance which are required to comply with applicable federal law shall be adopted and applied.