

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES  
IDAHO WATER RESOURCE BOARD**

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

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

**NOTICE OF RULEMAKING – PROPOSED RULE**

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 28, 2021.

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

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

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

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 This reduction comes through a combination of: (a) removal of obsolete provisions (such as outdated references and processes for electronic signature); (b) the removal of Idaho Administrative Procedures Act provisions inapplicable to contested cases before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

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

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

text to the Idaho Legislature in the late fall of 2021.

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

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at [mathew.weaver@idwr.idaho.gov](mailto:mathew.weaver@idwr.idaho.gov), (208) 287-4800.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 28, 2021.

Dated this 30th day of August, 2021

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