

Dear Senators LODGE, Harris, Stennett, and
Representatives HARRIS, Armstrong, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Office of the Attorney General:

IDAPA 04.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket
No. 04-0000-1900).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 07/16/2019. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/13/2019.

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

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



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Principal Legislative Drafting Attorney - Ryan Bush
DATE: June 26, 2019
SUBJECT: Office of the Attorney General

IDAPA 04.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket No. 04-0000-1900)

The Office of the Attorney General has submitted temporary and proposed rules that reauthorize and republish, in full, the following previously approved chapters under IDAPA 04:

04.02.01, Idaho Rules of Consumer Protection

04.11.01, Idaho Rules of Administrative Procedure of the Attorney General

04.12.01, Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed by Health Care Providers

04.20.01, Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. No substantive changes are noted.

cc: Office of the Attorney General
Brett T. DeLange

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

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

IDAPA 04 – OFFICE OF THE ATTORNEY GENERAL

DOCKET NO. 04-0000-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 39-4903(11) 39-8405(5), 48-604(2), 67-506(2), 67-5206(3), 67-5206(4) Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 04, rules of the Office of the Attorney General:

IDAPA 04

- 04.02.01, *Idaho Rules of Consumer Protection*
- 04.11.01, *Idaho Rules of Administrative Procedure of the Attorney General*
- 04.12.01, *Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed By Health Care Providers*
- 04.20.01, *Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found (and the Attorney General concurs) that temporary adoption of the rules set forth above is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

These rules govern important matters related to Idaho's marketplace, public health, the State's financial well-being, administrative procedures for considering cooperative health care agreements and administrative procedural processes.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brett DeLange, Chief, Consumer Protection Division, Office of the Attorney General. Mr. DeLange can be reached at (208) 334-4114 or brett.delange@ag.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Brett T. DeLange, Deputy Attorney General
Consumer Protection Division
Office of the Attorney General
954 W. Jefferson Street, 2nd Floor
P. O. Box 83720
Boise, Idaho 83720-0010
Phone: (208) 334-4114
Fax: (208) 334-4151
brett.delange@ag.idaho.gov

**IDAPA 04
TITLE 02
CHAPTER 01**

IDAPA 04 – OFFICE OF THE ATTORNEY GENERAL

04.02.01 – IDAHO RULES OF CONSUMER PROTECTION, OFFICE OF THE ATTORNEY GENERAL

**Subchapter A – General Provisions
(Rules 0 - 19)**

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Title 67, Chapter 52, Idaho Code, and pursuant to Section 48-604(2), Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules shall be entitled “Idaho Rules of Consumer Protection, Office of the Attorney General,” IDAPA 04, Title 02, Chapter 01. (7-1-93)

02. Scope. This chapter has the following scope: These rules are intended to protect persons in the state of Idaho against unfair, false, deceptive, misleading or unconscionable acts or practices by defining with reasonable specificity some of the acts and practices that violate the Act. Further, they are intended to provide reasonable guidance to persons doing business in the State of Idaho. (7-1-93)

002. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES (RULE 2).

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements that pertain to the interpretation of the rules of this chapter, or to the compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Office of the Attorney General, Consumer Protection Unit. (7-1-93)

003. RULES OF CONSTRUCTION (RULE 3).

Without limiting the scope of any section of the Act, or any other rule or law, these rules shall be liberally construed and applied to promote the general purposes and policies of the Act. (7-1-93)

004. NON-INCLUSIVE (RULE 4).

These rules are not intended to cover all trade practices that violate the provisions of the Act. Many areas of illegal practice in trade and commerce are not specifically encompassed by these rules, but are still actionable under the Act. (7-1-93)

005. CUMULATIVE (RULE 5).

These rules are intended to be cumulative in effect and supplementary to each other. If acts or practices are governed by more than one (1) rule, compliance with one (1) rule does not excuse violations of another applicable rule. (7-1-93)

006. NON-EXCLUSIVE (RULE 6).

These rules are in addition to, and do not affect, any other rights or obligations that may exist by statute or judicial decision. (7-1-93)

007. EXCEPTIONS TO THESE RULES (RULE 7).

These rules are subject to the same exceptions as set forth in Section 48-605, Idaho Code. (7-1-93)

008. REGULATED PERSONS (RULE 8).

Enforcement activities taken pursuant to these rules shall not be commenced against persons licensed and regulated by any state regulatory board within the Department of Self-Governing Agencies or the United States Government

when the actions or transactions are regulated by such regulatory board unless the Attorney General has first referred the matter in writing to the appropriate regulatory board. If at any time following the expiration of thirty (30) days from the time of forwarding the matter to the regulatory board the Attorney General is not satisfied with the progress or decision of the regulatory board, he may proceed to the extent of his jurisdiction under the Act. The 30-day provision will be abated to the extent that the regulatory board was given an express opportunity to review the matter prior to the time when the Attorney General began to consider the matter. The thirty (30) day provision may be waived in whole or in part if the Attorney General deems that the public interest requires prompt attention by the Attorney General. (7-1-93)

009. KNOWLEDGE (RULE 9).

These rules are not violated unless a person knows, or in exercise of due care should know, that he has in the past engaged in or is engaging in conduct specified or prohibited by the Act, or these rules. (7-1-93)

010. CITATION (RULE 10).

The official citation of these rules is IDAPA 04.02.01.000. For example, this section's citation is IDAPA 04.02.01.010. In written submissions to the Attorney General or issued by the Attorney General, these rules may be cited as CPR (Consumer Protection Rules) and rule number less leading zeroes. For example, this rule may be cited as CPR 10. (7-1-93)

011. -- 019. (RESERVED)

Subchapter B -- Definitions
(Rules 20 - 29)

020. DEFINITIONS (RULE 20).

The definitions set forth in Section 48-602, Idaho Code, apply with full force and effect to all provisions and sections of these rules, including rules hereafter amended or supplemented. Terms not defined in these rules or in Section 48-602, Idaho Code, shall be construed in accordance with definitions promulgated by the Federal Trade Commission. Terms not so defined shall be construed in accordance with general principles of Idaho law. As used in this chapter: (7-1-93)

01. Act. The Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code. (7-1-93)

02. Actions or Transactions Permitted Under Laws Administered by a Regulatory Body or Officer. Specific acts, practices, or transactions authorized by a regulatory body or officer pursuant to a contract, rule, or regulation, or other properly issued order, directive, or resolution. (1-21-92)

03. Advertisement (including words of similar meaning or import). Any oral, written, graphic, or pictorial representation, statement, or public notice, however made or utilized, including, without limitation, by publication, dissemination, solicitation or circulation, in the course of trade and commerce. A person's name under which trade or commerce is conducted shall be construed as advertising if an assumed name is used, and if the name has the capacity, tendency, or effect of misleading or deceiving consumers acting reasonably under the circumstances. (1-21-92)

04. Appropriate Trade Premises. Premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises. (1-21-92)

05. Ascertainable Loss. Any deprivation, detriment, or injury, or any decrease in amount, magnitude, or degree that is capable of being discovered, observed, or established. It is not necessary for a private plaintiff to prove actual damages of a specific dollar amount to prove ascertainable loss, but only that the item was different from that for which the private plaintiff bargained, or that the private plaintiff suffered some like loss. (7-1-93)

06. Bait and Switch. Advertising goods or services with the intent not to sell them but to lure the consumer to the seller's place of business and then switch the consumer from buying the advertised goods or services to other or different goods or services on a basis more advantageous to the seller. (1-21-92)

07. Bona Fide Gift. Any goods or services in which a statement is provided to the gift recipient at or prior to the time of delivery or performance, which clearly and conspicuously informs the recipient that the goods or services may be retained, used, discarded, rejected, or otherwise disposed of without any obligation to the person providing, sending, or performing the goods or services. (1-21-92)

08. Business Arrangement. Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a consumer and a seller or a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof. (1-21-92)

09. Business Day. Any calendar day, except Saturday, Sunday, or the following legal holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (7-1-93)

10. Buy-Down Rate. A financing rate which, as a result of a seller's advance payment of finance charges to a third party, is below the prevailing market financing rate. (1-21-92)

11. Clear and Conspicuous Disclosure. A statement, representation, or term which is disclosed in a manner that is: (1-21-92)

a. Reasonably close to any statement, representation or term it clarifies, modifies, explains, or to which it otherwise relates; (1-21-92)

b. Reasonably noticeable; (1-21-92)

c. Reasonably understandable by the persons to whom it is directed; and (1-21-92)

d. Not contradictory to any terms it purports to clarify, modify, or explain. (1-21-92)

12. Consideration. A right, interest, profit, or benefit accruing to a party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. (1-21-92)

13. Consumer. A person who purchases, leases, or rents, or is solicited to purchase, lease, rent or otherwise give consideration for any goods or services. (1-21-92)

14. Consumer Credit Contract. Any instrument which evidences or embodies a debt arising from a purchase money loan transaction or a financed sale. (1-21-92)

15. Credit Card Issuer. A person who extends to card holders the right to use a credit card in connection with purchases of goods or services. (1-21-92)

16. Creditor. A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; provided, such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer. (1-21-92)

17. Dealer. A seller of motor vehicles. (1-21-92)

18. Dealer Documentation Service Fee (including words of similar meaning or import, such as, but without limitation, "dealer's doc" fee, "administration" fee, "documentation and handling" fee and "D and H" fee). A fee charged by the dealer for services actually rendered to, for, or on behalf of the consumer in preparing, handling and processing documents pertaining to the motor vehicle and the closing of the transaction. (1-21-92)

19. Demonstrator Vehicle. A motor vehicle of the current or previous two (2) model years which has not been rented, leased, sold, titled or registered to a member of the public prior to the appearance of the advertisement, and which has been used by the dealer or dealership personnel for demonstration purposes. (1-21-92)

20. Disseminate. To publish, advertise, broadcast, deliver, circulate, mail, display, post, or otherwise

distribute to a consumer. "Dissemination date" means the first date an advertisement is disseminated. (1-21-92)

21. Documentary Material. The original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, audio and/or visual recording, mechanical, photographic, or electronic transcription, or other tangible document or recording. (1-21-92)

22. Door-to-Door Sale. A sale, lease, or rental of goods or services primarily for personal, family, or household purposes, with a purchase price of twenty-five dollars (\$25) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including solicitations made in response to or following an invitation by the consumer, and the consumer's agreement or offer to purchase is made at a place other than the appropriate trade premises of the seller. The term "door-to-door sale" does not include a transaction: (7-1-93)

a. Made pursuant to prior negotiations in the course of a visit by the consumer to the seller's retail business establishment, such establishment having a fixed permanent location where the goods or services being purchased are offered for sale on a continuing basis; (1-21-92)

b. In which the consumer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the consumer, and the consumer furnishes the seller with a separate dated and signed personal statement in the consumer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three (3) business days; (1-21-92)

c. Conducted and consummated entirely by mail or telephone, in compliance with all provisions of the Act, and any other federal or state of Idaho statute, regulation, or rule governing mail or telephone solicitations, and without any other contact between the consumer and the seller prior to delivery of the goods or performance of the services; or (7-1-93)

d. In which the consumer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the consumer's personal property; provided, however, that if in the course of such a visit, the seller sells the consumer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services does not fall within this exclusion; or (1-21-92)

e. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker registered with the Idaho Department of Finance. (1-21-92)

23. Examination. Examination of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment with respect to any such documentary material or copy thereof. (1-21-92)

24. Executive or Official Vehicle. A motor vehicle which has been driven exclusively by executives of the motor vehicle's manufacturer or by an executive of any authorized dealership selling the same make of motor vehicle. (1-21-92)

25. Exempt Loan Broker. Any person: (7-1-93)

a. Doing business under any law of the State of Idaho or of the United States relating to banks, credit unions, trust companies, savings and loan associations, insurers, pension trusts, real estate investment trust and other financial institutions, or under the uniform consumer credit code; (7-1-93)

b. Engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business; (7-1-93)

c. Securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of any act of Congress entitled "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured; (7-1-93)

- d. Who is a Federal Housing Administration approved mortgagee; or (7-1-93)
- e. Who is licensed under the Idaho Securities Act if the loan is made in accordance with applicable provisions of the Idaho Securities Act, the Securities Act of 1933, the Securities Exchange Act of 1934, and Regulation T promulgated by the Federal Reserve Board (12 C.F.R. Section 220). (7-1-93)
- 26. Financed Sale (Including Financing a Sale).** Extending credit to a consumer in connection with a consumer credit sale within the meaning of the Idaho Credit Code. (1-21-92)
- 27. Free (Including Words of Similar Meaning or Import).** Without charge or cost, monetary or otherwise, to the recipient, and includes terms of essentially identical import, such as “give away” or “complimentary.” (1-21-92)
- 28. Going-Out-of-Business Sale.** A sale advertised in such a manner as to reasonably cause a consumer to believe that the seller is in the process of concluding its affairs and discontinuing operation. Any sale using any of the following words or words of similar import shall be deemed to be a going-out-of-business sale unless each advertisement discloses it is not a going-out-of-business sale in a clear and conspicuous manner: “adjuster’s,” “adjustment,” “assignee’s,” “bankrupt,” “benefit of administrators,” “benefit of creditors,” “benefit of trustees,” “building coming down,” “closing,” “creditor’s,” “insolvent,” “end,” “executor’s,” “final days,” “forced out of business,” “last days,” “lease expires,” “liquidation,” “loss of lease,” “mortgage sale,” “receiver’s,” “quitting business,” “selling to the bare walls,” or “trustee’s.” (1-21-92)
- 29. Goods.** Any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, including certificates or coupons exchangeable for such goods. (1-21-92)
- 30. Information Provider.** Any person that controls the content of a pay-per-telephone-call service. Any telephone corporation that provides basic local exchange service or message telecommunication service, as defined by Section 62-603, Idaho Code, which transmits pay-per-telephone-call service but does not control the content of the information transmitted is not within this definition. (7-1-93)
- 31. Leased Vehicle** (including words of similar meaning or import). A motor vehicle that has been driven for a specific period of time pursuant to a lessor-lessee agreement. (7-1-93)
- 32. Loan Broker.** Any person, except an exempt loan broker, who offers for compensation to arrange for a loan or other extension of credit. (7-1-93)
- 33. Motor Vehicle** (including words of similar meaning or import). A motor vehicle as defined in the Idaho Motor Vehicles Act (Idaho Code Section 49-101 et seq.) (1-21-92)
- 34. Negative Option Notice Requirements.** Negative option notice requirements means: (7-1-93)
- a. A notice received by a consumer, at least thirty (30) but not more than forty-five (45) days, in advance of the effective date of the delivery or provision of goods or services, clearly and conspicuously: (1-21-92)
- i. Describing the specific goods or services to be delivered or provided; (1-21-92)
- ii. Stating the price of the goods or services delivered or provided; (1-21-92)
- iii. Informing the consumer that the goods or services will be delivered or provided unless the consumer informs the seller that the goods or services are not wanted; and (7-1-93)
- iv. Informing the consumer of at least two (2) methods, at least one (1) of which is expense-free to the consumer, by which the consumer can inform the seller of his desire not to receive the goods or services; (1-21-92)
- b. A statement on the first bill containing a charge for the goods or services, or a separate notice

enclosed with the bill, which clearly and conspicuously advises the consumer of the inclusion of the new charge on the bill for the new goods or services, of the consumer's right to cancel those goods or services within ten (10) days of the receipt of the bill at no cost to the consumer for the period during which those goods or services were provided prior to effective cancellation, and the process by which the consumer may cancel the goods or services; and
(1-21-92)

c. In no event shall the consumer be required to cancel the new goods or services governed by this definition to avoid a charge prior to ten (10) days after the consumer's receipt of the first bill containing the charge for the new goods or services. For purposes of cancellation by mail, a cancellation shall be effective upon the date of mailing the cancellation notice.
(1-21-92)

35. New Motor Vehicle (including words of similar meaning or import). A motor vehicle that has not had its equitable or legal title transferred by a manufacturer, distributor, or dealer to a consumer (except a franchised distributor or franchised new motor vehicle dealer) or which has not been previously rented or leased to a person for any period of time.
(7-1-93)

36. Offer. Any solicitation, invitation, or proposal by a seller to a consumer through which a seller, either directly or indirectly, attempts or intends to sell, rent, or lease goods or services or to induce a consumer to purchase, rent, or lease goods or services. This definition is not intended to create a contract, where none would otherwise exist under Idaho law, though it is noted that the Act and these rules impose duties and provide for remedies for violations thereof even in the absence of a binding contract.
(7-1-93)

37. Pay-per-Telephone-Call Services. Any telecommunications service which permits simultaneous calling by a number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.
(7-1-93)

38. Person. Natural persons, corporations, both foreign and domestic, companies, business entities, trusts, partnerships, both limited and general, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, employee, representative, or servant thereof.
(1-21-92)

39. Purchase Money Loan. A cash advance that is received by a consumer in return for a credit service charge within the meaning of the Idaho Credit Code, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who refers consumers to the creditor or is affiliated with the creditor by common control, contract, or business arrangement.
(7-1-93)

40. Purchase Price. The total price paid or to be paid for the goods or services, including all interest and service charges.
(1-21-92)

41. Pyramid or Chain Distribution Scheme. Any plan or operation whereby a person gives consideration for the opportunity to receive consideration to be derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods or services by the person or other persons introduced into the plan or operation. For the purposes of this definition, the term "consideration" shall not include:
(1-21-92)

a. The not-for-profit sale of demonstration equipment and materials for use in making sales and which are not for resale; and
(1-21-92)

b. Time or effort spent in selling or recruiting activities.
(1-21-92)

42. Referral Sale. Any sale or lease of goods or services where the seller as an inducement for the sale or lease, promises or offers to give consideration to a consumer who:
(1-21-92)

a. Furnishes names of other consumers or otherwise aids the seller in making other consumer sales or leases; and
(1-21-92)

b. The consideration the consumer will receive is contingent upon the seller or consumer making future sales to persons referred by the consumer. (1-21-92)

c. Referral sale does not include promotions which are subject to and in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425). (1-21-92)

43. Regulatory Body or Officer. Any person or governmental entity with authority to act pursuant to State of Idaho or federal statute. (1-21-92)

44. Seller. Any person engaged in trade and commerce, the agent, representative, or employee of such person, or any person acting in concert with such person. (1-21-92)

45. Send. To deliver, mail, provide, or cause to be mailed, delivered, or provided. (1-21-92)

46. Services. Work, labor, or any other act or practice provided or performed by a seller to or on behalf of a consumer. (1-21-92)

47. Subject to Financing Contract. An agreement whereby a consumer's obligation to purchase goods or services from a seller is contingent upon the obtaining of financing by, or on behalf of, a consumer. (1-21-92)

48. Trade and Commerce. Advertising, offering for sale, selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services, or distributing goods or services, at any point in the marketing chain, either to or from locations within the State of Idaho, directly or indirectly affecting the people of this State. (7-1-93)

49. Trade Area. The geographic area where a seller is located and where the seller's advertisements are disseminated. (1-21-92)

50. Unordered Goods or Services. Goods or services which are sent or provided without the prior expressed request or consent from the person receiving the goods or services. Unordered goods or services do not include: (7-1-93)

a. Goods sent or services performed by mistake; (1-21-92)

b. Bona fide gifts; (1-21-92)

c. Additions to existing goods or services or levels of goods or services, already provided to consumers for which there is no separate and specific charge for such additions; (1-21-92)

d. The restructuring of existing goods or services or levels of goods or services already provided, pursuant to negative option notice requirements, where the restructuring does not result in a substantial change in goods or services; or (1-21-92)

e. Goods or services sent pursuant to an agreement which is in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425). (1-21-92)

51. Used Motor Vehicle (including words of similar meaning or import). Previously rented motor vehicles, executive or official motor vehicles, leased motor vehicles, and all other motor vehicles that are not new motor vehicles. (7-1-93)

52. Verifiable Retail Value. A price at which a seller can demonstrate that a substantial number of goods or services have been sold at retail by a person other than the seller. If substantiation described in this section is not available to a seller, the verifiable retail value shall be no more than one and one-half (1.5) times the amount the seller paid for the goods or services. (7-1-93)

021. -- 029. (RESERVED)

Subchapter C -- False, Misleading Conduct in General
(Rules 30 - 39)

030. GENERAL RULE (RULE 30).

It is an unfair and deceptive act or practice for a seller to make any claim or representation concerning goods or services which directly, or by implication, has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances. An omission of a material or relevant fact shall be treated with the same effect as a false, misleading, or deceptive claim or representation, when such omission, on the basis of what has been stated or implied, would have the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances. With reference to goods or services, this prohibition includes, but is not limited to, factors relating to the cost, construction, durability, reliability, manner or time of performance, safety, strength, condition, life expectancy, ease of operation, problems associated with repair or maintenance, availability, or the benefit to be derived from the use of the goods or services. (1-21-92)

031. SUBSTANTIATION (RULE 31).

The responsibility for truthful advertising which does not have the capacity, tendency, or effect of deceiving or misleading consumers acting reasonably under the circumstances rests with the seller. Sellers must be able to substantiate all claims or offers made before such claims or offers are advertised. Sellers must maintain sufficient records to substantiate all representations made in their advertisements. (1-21-92)

032. CONTRADICTORY REPRESENTATIONS (RULE 32).

It is an unfair and deceptive act or practice for a seller to make any claim or representation that is inconsistent with or contradictory to any written claim, representation, or provision which is contained in any contract, document, or instrument evidencing a transaction. (1-21-92)

033. VIOLATIONS OF OTHER LAWS AND COURT ORDERS (RULE 33).

It is an unfair and deceptive act or practice for any seller to engage in trade or commerce if in so doing the seller or the seller's goods or services fail to comply with: (1-21-92)

01. Federal and State Laws. Any Federal Trade Commission rule or regulation, the disclosure requirements of either the federal Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. Section 226) or the federal Truth in Lending Act (15 U.S.C. Section 1667 et seq.) and Regulation M promulgated by the Board of Governors of the Federal Reserve Board (12 C.F.R. Section 213), or any State of Idaho statute or rule that identifies conduct in trade and commerce as unfair or deceptive or a violation of the Act. (7-1-93)

02. Federal Trade Commission Consent Decree. Any Federal Trade Commission Consent Decree in which the seller is a party to the decree. (1-21-92)

03. Judicial Order. Any judgment, injunction, order, or other relief obtained by the Federal Trade Commission in any action brought in a United States District Court in which the seller is a party or otherwise subject to the court's decrees and orders. (1-21-92)

034. OFFICIAL, GOVERNMENTAL, OR OTHER MISLEADING ENVELOPES OR OFFERS (RULE 34).

It is an unfair and deceptive act or practice for any seller to use any printing styles, graphics, layouts, text, colors, or formats on envelopes or on the offer which implies, creates an appearance, or would lead a reasonable person to believe that the offer originates from or is issued by or on behalf of a government or public agency, public utility, public organization, insurance company, credit reporting agency, bill collecting company or a law firm, unless the same is true. (1-21-92)

035. INVOICES AND BILLS (RULE 35).

It is an unfair and deceptive act or practice for a seller to advertise by use of any written or documentary material that

has the tendency, capacity, or effect of misleading a consumer, acting reasonably under the circumstances, that the advertisement is an invoice or bill. (7-1-93)

036. MAILBOX ADDRESSES (RULE 36).

It is an unfair and deceptive act or practice for a seller to refer to a U.S. Post Office box number or a private mail service box number in trade and commerce as a "suite," "department," "office," "apartment," or any other term or abbreviation that has the tendency, capacity, or effect of misleading a consumer, acting reasonably under the circumstances, to believe that the reference pertains to anything other than a box number at a U.S. Post Office or at a private mailbox service. (7-1-93)

037. -- 039. (RESERVED)

Subchapter D -- Disclosure of Conditions in Offer
(Rules 40 - 49)

040. GENERAL RULE (RULE 40).

It is an unfair and deceptive act or practice for a seller to offer goods or services with material contingencies, conditions, or qualifications attendant to the offer unless such contingencies, conditions, or qualifications are clearly and conspicuously disclosed in connection with the initial offer. (1-21-92)

041. SUBSEQUENT DISCLOSURE (RULE 41).

Subsequent disclosure to the consumer of such material contingencies, conditions, or qualifications attendant to an initial offer, even if prior to consummation of the transaction relating to the offer, is not a defense to the requirements of CPR 40. (1-21-92)

042. -- 049. (RESERVED)

Subchapter E -- Bait and Switch Sales
(Rules 50 -- 59)

050. GENERAL RULE (RULE 50).

It is an unfair and deceptive act or practice for a seller to engage in bait-and-switch sales tactics. (1-21-92)

051. INITIAL OFFER (RULE 51).

It is an unfair and deceptive act or practice for a seller to create a false impression of the grade, quality, quantity, make, value, age, size, color, usability, availability, or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the consumer may be switched from the advertised goods or services to other goods or services. Even though the true facts are subsequently made known to the consumer, subchapter E is violated if the first contact or interview is secured by a bait-and-switch offer. (7-1-93)

052. DISCOURAGEMENT OF PURCHASE OF ADVERTISED MERCHANDISE (RULE 52).

It is an unfair and deceptive act or practice for a seller to discourage the purchase of the advertised goods or services as part of a bait-and-switch scheme to sell other goods or services. For example, among acts or practices which will be considered in determining if an advertisement is a bona fide offer are: (1-21-92)

01. Refusal to Show. The refusal to reasonably show, demonstrate, or sell the goods or services advertised or otherwise offered in accordance with the terms of the initial offer. (1-21-92)

02. Disparagement. The disparagement by acts or words of the advertised goods or services or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or parts, or in any other respect, in connection with the advertised goods or services. (1-21-92)

03. Availability. The failure to have available at all outlets listed in the advertisement a sufficient

quantity of the advertised goods or services to meet reasonably expected public demand, as defined in CPR 103, unless the advertisement clearly and conspicuously discloses that the supply of a particular good is limited and/or the goods or services are available only at designated outlets, or unless the advertisement discloses that a particular good is to be closed out or offered for a limited time. Issuing of “rain checks” of goods or offering comparable or better goods at the sale price will be considered a mitigating circumstance, unless there is a pattern of inadequate inventory or the inadequate inventory was intentional. (7-1-93)

04. Refusal to Take Orders. The refusal to take orders for the advertised goods or services to be delivered within a reasonable period of time. (1-21-92)

05. Showing Impractical Goods or Services. The showing or demonstrating of goods or services which are defective, unusable, or impractical for the purpose represented or implied in the advertisement. (1-21-92)

06. Compensation Plans. The use of a sales plan or method of compensation for salesmen which is designed to prevent or discourage them from selling the advertised goods or services. This does not prohibit compensating salesmen by use of a commission. (1-21-92)

053. SWITCH AFTER SALE (RULE 53).

In the event of a sale of the advertised goods or services, it is an unfair and deceptive act or practice for a seller to attempt to “unsell” the advertised goods or services with the intent and purpose of selling other goods or services in their stead, except when the parties are bargaining for a bona fide trade-in. (1-21-92)

054. PATTERN OF CONDUCT (RULE 54).

The fact that a seller occasionally sells the advertised goods or services at the advertised price shall not constitute a defense to a charge that the seller has engaged in bait-and-switch tactics. (1-21-92)

055. LEADER ITEMS (RULE 55).

Nothing in subchapter E shall prevent a seller from advertising goods and services with the hope that consumers will buy goods or services in addition to those advertised. (7-1-93)

056. -- 059. (RESERVED)

Subchapter F -- Deceptive, Comparative, Reference, and Wholesale Pricing
(Rules 60 -- 69)

060. DECEPTIVE PRICING -- GENERAL RULE (RULE 60).

It is an unfair and deceptive act or practice for a seller to represent or imply that: (1-21-92)

01. Misrepresentations. Goods or services may be purchased for a specified price, if such is not the case. (1-1-79)

02. Reduced Price. Goods or services are being offered for sale at a reduced price, if such is not the case. For example, a firm publishes a catalog or brochure entitled “pre-Christmas sale.” Some of the items in the catalog are being offered at a reduced price, but others are not. On the non-sale (discounted) items, the advertisement should disclose that the item is being offered at the everyday price or the sales items should be clearly identified as such. If none of the advertised items are being offered at a reduced price, then it is inappropriate to use a term such as “sale.” (1-1-79)

03. Hidden Costs. A stated price is for complete or functional goods or services, if, in fact, there are additional hidden costs which must be expended in order to make the goods or services complete or functional. (1-1-79)

04. Services. A stated price of goods or services includes certain services, such as delivery, installation, service or adjustments, or includes parts or accessories, if such is not the case. (1-1-79)

05. Specific Goods or Services. A stated price applies to all sizes or types of goods or services, if the

stated price is in fact applicable only to certain sizes or types of goods or services. (1-21-92)

06. Inventory. A stated price reduction applies to an entire inventory or grouping of goods when it only applies to isolated items within the inventory or grouping. (1-1-79)

061. COMPARATIVE PRICING -- GENERAL RULE (RULE 61).

It is an unfair and deceptive act or practice for a seller to represent by any means which has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances as to the value of the past, present, common, or usual price of goods or services, or as to any reduction in the price of goods or services, or any savings relating to the cost or price of the goods or services. (1-21-92)

01. Savings or Value Claims. Savings or value claims utilized in connection with terms such as “originally,” “formerly,” “regularly,” “usually,” “list price,” “compare at,” or other like terms, expressions or representations must be based on facts provable by the seller: (1-1-79)

a. By the seller’s own records; or (1-21-92)

b. By reasonably substantial competitive sales in the trade area where such claims or representations are made, under circumstances and conditions represented or implied by the claims or representations. (1-21-92)

02. Comparison Claims. The use of such terms as “reduced,” “sale,” “special price,” “originally,” “formerly,” “slashed,” etc. shall be deemed to be comparisons between the seller’s present prices and his bona fide, regular prices. Terms such as “list price,” “compare at,” “comparable value,” “suggested price,” etc. shall be deemed to be comparisons between the seller’s present prices and the prevailing competitors’ prices. Terms such as “discount,” “usually,” “regularly,” etc., which have a vague meaning shall be presumed to be a comparison between the seller’s present prices and his bona fide, regular prices, unless the seller states otherwise in his advertising or sales promotion. (1-21-92)

062. COMPARISONS OF SELLER'S PRESENT PRICES TO SELLER'S FORMER PRICES (RULE 62).
It is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Fictitious Prices. Offer goods or services by representations comparing present prices to former prices of the seller, if the seller establishes a fictitious or inflated former price for a short period of time and for the purpose of subsequently offering a reduction. For example, a seller usually sells a certain pen for a regular price of seven dollars and fifty cents (\$7.50), but he raises the price of the pen to an inflated price of ten dollars (\$10) for a short period of time. He then “cuts” the price to its usual level of seven dollars and fifty cents (\$7.50), and advertises: “Terrific Bargain: Were \$10.00, Now Only \$7.50”; or (1-1-79)

02. Bona Fide Regular Price. Offer goods or services by representations comparing present prices to former prices of the seller, if the former price was merely an asking price and was not the bona fide, regular price at which such goods or services were openly, actively, and actually offered for sale or sold. (7-1-93)

063. COMPETITOR RETAIL PRICE COMPARISONS (RULE 63).

It is an unfair and deceptive act or practice for a seller to offer goods or services by representations comparing the prices of the seller’s goods or services to the prices of identical goods or services of competitors, unless the seller can substantiate that the represented prices of the competitor’s goods or services are in fact the actual prices charged by the competitor in the same trade area, at the same point in time or on the date(s) clearly and conspicuously disclosed in the advertisement. If a price is stated without clear and conspicuous disclosure of a date on which it was in effect, it shall be presumed to be the current price. (7-1-93)

064. COMPARABLE PRICE COMPARISONS (RULE 64).

It is an unfair and deceptive act or practice for a seller to offer goods or services by representations comparing the prices of the seller’s goods or services to the prices of comparable, but not identical, goods or services of a competitor’s, unless the seller can substantiate that the goods or services compared are substantially similar in grade and quality and the represented prices of the competitor’s goods or services are in fact the actual prices charged by the competitor in the same trade area, at the same point in time or on the date(s) clearly and conspicuously disclosed in the advertisement. If a price is stated without clear and conspicuous disclosure of a date on which it was in effect, it

shall be presumed to be the current price. (7-1-93)

065. REFERENCE RETAIL PRICING PRACTICES (RULE 65).

It is an unfair and deceptive act or practice for a seller to offer goods or services by representations comparing present prices to “manufacturer’s suggested prices,” or similar language establishing or implying base reference price comparisons, unless such reference price represents, in fact, a good faith, honest estimate of the regular price at which a substantial number of sales of the goods or services are made by comparable sellers in the same trade area or unless federal or state law permits or requires the disclosure of the price suggested by the manufacturer. CPR 65 applies with the same force and effect regardless of whether the advertiser is a national or regional manufacturer or supplier, a mail-order or catalog seller, or a local retailer, and regardless of whether the prices, establishing a basis for comparison, are advertised or pre-ticketed. (7-1-93)

066. WHOLESALE, FACTORY DIRECT, OR SIMILAR CLAIMS (RULE 66).

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Factory. Describe itself or its goods by using the terms “factory direct,” “factory to you,” “direct from maker,” “factory outlet,” or words of similar meaning in its advertisements unless the seller’s goods are actually manufactured by the seller or in factories owned or controlled by the seller. (1-21-92)

02. Wholesaler. Describe itself by using the terms “wholesaler,” “wholesale outlet,” “distributor,” or words of similar meaning in its advertisements unless the seller actually owns and operates or directly and absolutely controls a wholesale or distribution facility which primarily sells goods to retailers for resale. A seller to which this provision applies may in addition be subject to CPR 66.03 and CPR 66.04 below. (1-21-92)

03. Cost. Use in connection with the advertising or sale of any goods or services, the terms “cost,” “invoice price,” “factory invoice,” “factory billing,” or terms of similar meaning or import or other representations that a good or service will be sold at, above, or below the seller’s actual cost unless such is true. (7-1-93)

04. Wholesale Prices. State or imply that any goods or services are being offered at “wholesale” prices or to use a term of similar meaning unless the prices are in fact at or below the current prices which most retailers in the trade area usually and customarily pay when they buy such goods or services for resale. (1-21-92)

067. LIMITED OFFERS (RULE 67).

It is an unfair and deceptive act or practice to offer goods or services by representations that the offer is “limited” unless the offer is in fact limited in duration or scope, or that the offer is an advance sale or introductory offer, and the seller in good faith expects to increase the price at a later date. (7-1-93)

068. SUBSTANTIATION (RULE 68).

A seller shall keep records or other documentary proof for a period of two (2) years which establish and substantiate the price claims and comparisons made. Failure to do so shall create a rebuttable presumption that the seller lacked a reasonable basis for the claims and comparisons made. (1-21-92)

069. (RESERVED)

Subchapter G -- Use of the Word “Free” and Similar Representations
(Rules 70 -- 79)

070. GENERAL RULE (RULE 70).

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Free No Cost Offers. Offer any goods or services as free, by use of the word “free” or other term of similar import, unless receipt of the free goods or services by a consumer is without added cost to the consumer; provided, however, that the consumer may be required to pay necessary delivery charges to the United States Post Office or a regulated public carrier if such fact is clearly and conspicuously disclosed in the offer and provided that the consumer may be required to purchase goods at their regular price as a precondition of entitlement to the free goods if such fact is readily apparent to a consumer acting reasonably under the circumstances or is clearly and

conspicuously disclosed in the offer. (1-21-92)

02. Free With Cost Offers. Offer any goods or services as “free,” “2 for 1,” “1-cent Sale,” or other term of similar import, if the seller increases the price of the base goods or services above their regular price or if the seller reduces the quality, quantity or size of the base goods or services. (1-1-79)

071. TIE-IN SALES (RULE 71).

It is an unfair and deceptive act or practice for a seller to offer any goods or services as free, by use of the word “free” or other term of similar import, if the seller fails to clearly and conspicuously disclose at the outset all terms, conditions, and obligations upon which receipt and retention of the free items are contingent. (1-21-92)

072. CONDITIONAL OFFERS (RULE 72).

It is an unfair and deceptive act or practice for a seller to offer any goods or services as free, by use of the word “free” or other term of similar import, when the consumer is obligated to perform conditions which are not readily apparent to a consumer acting reasonably under the circumstances or are not clearly and conspicuously disclosed. (1-21-92)

073. USE OF SIMILAR TERMS (RULE 73).

It is an unfair and deceptive act or practice for a seller to meet the provisions of subchapter G by substitution of such similar words and terms as “gift,” “given without charge,” “at no cost,” “complimentary,” “bonus,” or other words or terms which tend to convey the impression to the consuming public that goods or services are free. (7-1-93)

074. ASTERISKS (RULE 74).

For purposes of this rule, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, does not constitute a clear and conspicuous disclosure at the outset. (1-21-92)

075. DELIVERY CHARGES (RULE 75).

In all instances in which delivery charges, which shall be deemed to include all shipping and handling charges, shall exceed ten dollars, pursuant to an offer subject to subchapter G, the total amount of such charges shall be clearly and conspicuously disclosed in the offer. Negative option membership plans operated in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425) are exempt from the provisions of CPR 75. (7-1-93)

076. -- 079. (RESERVED)

Subchapter H -- Promotional Games and Advertising and Deceptive Use of Gifts
(Rules 80 -- 89)

080. NO PURCHASE REQUIRED FOR CHANCE PROMOTIONS (RULE 80).

It is an unfair and deceptive act or practice for a seller to offer, initiate, promote, or solicit participation in any kind of game of chance, contest, sweepstakes, or promotion in which goods or services are distributed by random or chance selection that requires any kind of entry fee, service charge, purchase, payments to information providers, or other obligation in order to enter or participate in the promotion or receive any of the offered awards, prizes, or gifts. Those persons authorized by Title 67, Chapter 77, Idaho Code, to conduct bingo and raffle games for charitable purposes, if conducted in conformity with Title 67, Chapter 77, Idaho Code, and negative option membership plans operated in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425) are exempt from CPR 80. (7-1-93)

081. DISCLOSURE REQUIREMENTS IN GIFT PROMOTIONS (RULE 81).

It is an unfair and deceptive act or practice for a seller to offer, in writing, any goods or services, without obligation, as an inducement to a consumer to attend an in-person sales presentation or contact the seller by telephone or by mail, but only if the seller follows up the consumer’s mail contact with a telephone contact, unless the offer clearly and conspicuously discloses in writing all of the following: (7-1-93)

01. Name and Address. The name and street address of the seller of the goods or services which are the subject of the sales presentation or contact with the seller. If the offer is made by an independent contractor of the

seller, or is made under a name other than the true name of the seller, the name of the seller shall be more prominently and conspicuously displayed than the name of the independent contractor or other name. (1-21-92)

02. Purpose of Contact. The purpose of the requested sales presentation or contact with the seller, which shall include a general description of the goods or services that are the subject of the sales presentation and a clear statement, if applicable, that there will be a sales presentation and the approximate duration of the sales presentation. (7-1-93)

03. Odds. If the consumer is not assured of receiving any particular good or service, a statement of the odds of receiving each good or service offered. The odds "100,000" or "1:100,000." The odds shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer. (7-1-93)

04. Conditions. All restrictions, qualifications, and other conditions that must be satisfied before the consumer is entitled to receive the good or service, including but not limited to: (7-1-93)

a. Any deadline by which the consumer must attend the sales presentation or contact the seller in order to receive the good or service; and (7-1-93)

b. Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the consumer is married both husband and wife must be present in order to receive the good or service. Any financial qualifications shall be stated with specificity sufficient to enable the person to reasonably determine his or her eligibility; (7-1-93)

05. Verifiable Retail Value. The verifiable retail value of each good or service the consumer has been offered, awarded, or may be awarded. (7-1-93)

06. No Purchase Necessary. That no purchase is necessary in order to receive the goods or services that have been offered to the consumer as an inducement to attend the in-person sales presentation or contact the seller by telephone or by mail, but only if the seller follows up the consumer's mail contact with a telephone contact. (7-1-93)

07. Other Requirements. All other rules, terms and conditions of the offer, plan, or program. (1-21-92)

082. MISLEADING OFFERS (RULE 82).
It is an unfair and deceptive act or practice for any seller making an offer subject to Subchapter H to: (7-1-93)

01. Misrepresent Goods or Services. Misrepresent the size, availability, quantity, identity, value, or qualities of any good or service. (7-1-93)

02. Misrepresent Odds. Misrepresent in any manner the odds of receiving any particular good or service. (7-1-93)

03. Specially Selected. Represent directly or by implication that the number of participants has been significantly limited or that any consumer has been specially selected to receive a particular good or service unless that is the fact. (7-1-93)

04. Labeling Offers. Label any offer a notice of termination or notice of cancellation. (7-1-93)

05. Misrepresent Offer. Misrepresent, in any manner, the offer, plan, program, or the affiliation, connection, association, or contractual relationship between the person making the offer and the owner, if they are not the same. (1-21-92)

06. Tendency to Mislead. Use publications, literature, or any written or verbal promotion that has the capacity, tendency, or effect of misleading or deceiving a consumer acting reasonably under the circumstances. (7-1-93)

07. Fail to Deliver. Fail to deliver the good or service to the consumer, at no expense to him or her, within ten (10) business days of the date of the initial contact by the seller to the consumer. Negative option membership plans operated in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425) are exempt from CPR 82.07. (7-1-93)

083. -- 089. (RESERVED)

Subchapter I -- Going-Out-Of-Business Sales
(Rules 90 -- 99)

090. GENERAL RULE (RULE 90).

It is an unfair and deceptive act or practice for a seller to advertise a going-out-of-business sale, unless the circumstances are in fact true and the going-out-of-business sale prices for goods or services are in fact lower than the regular prices of such goods or services. (1-21-92)

091. INFLATING INVENTORY (RULE 91).

No goods may be ordered for, or in anticipation of, a going-out-of-business sale, except in accordance with sound commercial practices. For example, it would be considered commercially sound to order a dryer that matches an existing washing machine. For purposes of subchapter I, all goods ordered within thirty (30) days prior to the beginning of a going-out-of-business sale shall create a rebuttable presumption that such goods were ordered in anticipation of a going-out-of-business sale. (7-1-93)

092. -- 099. (RESERVED)

Subchapter J -- Insufficient Supply/Limitation on Quantity
(Rules 100 - 109)

100. GENERAL RULE (RULE 100).

It is an unfair and deceptive act or practice for a seller to advertise goods or services with intent not to have sufficient quantity of the goods, or sufficient facilities to render the services, to satisfy reasonably expected public demand unless the quantity is clearly and conspicuously advertised as limited. (1-21-92)

101. RAIN CHECKS (RULE 101).

If the seller issues rain checks for goods for which the advertisement does not clearly and conspicuously disclose that quantities are limited, such "rain checks" will be considered a mitigating circumstance, unless there is a pattern of inadequate inventory, or the inadequate inventory was intentional. (1-21-92)

102. SUBSTITUTE GOODS (RULE 102).

If the seller offers comparable or better goods at the sale price, such practice will be considered a mitigating circumstance, unless there is a pattern of inadequate inventory, or the inadequate inventory was intentional. (1-21-92)

103. DETERMINATION OF REASONABLY EXPECTED PUBLIC DEMAND (RULE 103).

Reasonably expected public demand shall be construed with respect to the following factors: (1-21-92)

01. Records of Past Sales. The record of past sales by a seller. (1-21-92)

02. Price Reduction. The amount of price reduction, if any, and quality of goods or services offered. (1-21-92)

03. Advertising Scope. The extent of advertising engaged in regarding the sale of goods or services and duration of the sale as advertised. (1-21-92)

104. LIMITATION OF QUANTITY OF FUNGIBLE GOODS (RULE 104).

Pursuant to Section 48-405A, Idaho Code, as incorporated by Section 48-603(17), Idaho Code, it is an unfair and

deceptive act or practice for a seller to offer fungible, mass-produced goods to the general public with a limitation on the quantity any one (1) consumer can purchase: (1-21-92)

01. Personal, Family, or Household Purposes. When the proposed sale is to a person who is buying the goods for his own personal, family, or household purposes. (1-21-92)

02. Non-Services. When the proposed sale involves goods which are not offered in conjunction with the rendering of services, other than services normally associated with standard retailing. (1-21-92)

105. COUPON SALES (RULE 105).
For purposes of CPR 104, a seller may limit the quantity of goods per coupon if the actual limitation is contained on the coupon, and the limitation is clearly and conspicuously disclosed. (7-1-93)

106. INCREMENT STEP PRICING (RULE 106).
For purposes of CPR 104, it is not an unfair and deceptive act or practice to offer a limited number of goods at the sale price and subsequent goods of the same commodity at higher prices; provided, however, that the offer clearly and conspicuously discloses such incremental pricing. Nevertheless, the seller cannot prevent the consumer from taking advantage of the special price by limiting the number of times the consumer can return to the store. (7-1-93)

107. -- 109. (RESERVED)

Subchapter K -- Disclosure of Prior Use
(Rules 110 - 119)

110. GENERAL RULE (RULE 110).
It is an unfair and deceptive act or practice for a seller to represent, directly or indirectly, that goods are new or unused, or that any part of a good is new or unused, if such is not in fact true, or to misrepresent the extent of previous use of goods. (1-21-92)

111. DISCLOSURE REQUIRED (RULE 111).
It is an unfair and deceptive act or practice for a seller to advertise, offer for sale, or sell any goods, as new goods, which are used, or contain used parts, are rebuilt, remanufactured, reconditioned, or contain rebuilt, remanufactured, or reconditioned parts, if such is not in fact true, unless clear and conspicuous disclosure of such characteristics or attributes is made to the consumer prior to the sale. There is a rebuttable presumption that a seller offers or advertises goods as new goods, unless clear and conspicuous disclosure to the contrary is provided. (1-21-92)

112. ACCEPTABLE DISCLOSURES (RULE 112).
The disclosure that goods have been used or contains used parts as required by CPR 111, may be made by use of a word or words such as, but not limited to, "used," "second hand," "demonstrator," "repossessed," "repaired," "remanufactured," "reconditioned," or "rebuilt," etc., whichever is applicable to the product involved. (7-1-93)

113. RETURNED GOODS (RULE 113).
Goods are not considered used if a prior consumer was given a full refund or exchange for the goods, in the normal course of business, and if the goods are not known to presently or formerly have defects. (1-1-79)

114. -- 119. (RESERVED)

Subchapter L -- Estimates
(Rules 120 - 129)

120. GENERAL RULE (RULE 120).
It is an unfair and deceptive act or practice in connection with the furnishing of any repairs or improvements to goods, and in any rendering of services, for a seller to unreasonably understate or misstate the estimated price, whether such estimate be oral or written, or whether such estimate be formal or indirect; provided, however, that nothing herein

shall be construed to require that an estimate actually be furnished. (1-21-92)

121. UNFORESEEABLE CONDITIONS (RULE 121).

If an estimate is given, it is an unfair and deceptive act or practice for a seller to fail to obtain oral or written authorization in advance of performing additional and related, unforeseen, but necessary, repairs or improvements or services if such repairs, improvements, or services would unreasonably increase the originally estimated price.

(1-21-92)

122. EXPRESS LIMITED AUTHORIZATION (RULE 122).

When a person expressly limits the authorized price of any repairs, improvements, or services, it is an unfair and deceptive act or practice for a seller to exceed such authorization without first obtaining the express oral or written consent of such person.

(1-21-92)

123. -- 129. (RESERVED)

Subchapter M -- Repairs and Improvements
(Rules 130 - 139)

130. GENERAL RULE (RULE 130).

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Necessity of Repairs. Represent that repairs or improvements are necessary when such is not the fact or perform and charge for unnecessary repairs. (1-21-92)

02. Completion of Repairs. Represent that repairs or improvements have been made when such is not the fact. (1-1-79)

03. Misrepresent Danger. Represent that the goods being inspected or diagnosed are in a dangerous condition or that the person's continued use of the goods may be harmful when such is not the fact. (1-1-79)

04. Liens. Wrongfully permit, by action or inaction, any mechanic's or materialmen's lien, or any other lien, to be filed or perfected against goods being repaired or improved, or wrongfully retain possession of the subject goods, when the owner or consumer has tendered payment in full or has tendered payment in accordance with the contract authorizing the repair or improvement. (1-21-92)

05. Model Jobs. In the case of any improvement to real property, represent falsely that the improvement is to serve as a "model" or "advertising job" or similarly mislead the consumer that a price reduction or other compensation will be received by reason of such real property improvement. (1-21-92)

131. ITEMIZED BILLING (RULE 131).

Unless there is an express contract setting forth a lump-sum basis for compensation, it is an unfair and deceptive act or practice for a seller to fail to provide, upon specific request, one itemized billing, statement, or copy of a work order, which includes: (1-21-92)

01. Labor Charges. Labor charges, designating the number of hours and the rate per hour; or designating the flat rate labor charge or job rate if such repairs or improvements are customarily done and billed on a flat rate labor charge or job rate price basis; or, when a minimum charge is imposed, designating that fact. (1-21-92)

02. Parts and Materials. Parts and materials, designating each item that is separately included in calculating the total billing, and designating whether such parts or materials are used or rebuilt. (1-21-92)

03. Other Charges. Miscellaneous charges, designating the reason for the charge and the basis for calculation of the charge. (1-1-79)

04. Unit Pricing. Alternatively, where the agreement sets forth a price per unit, then the number of units being billed at that price. For example, a contract provides for carpeting and installation at ten dollars (\$10) per

yard. The itemized billing would state "92 yards carpeting at \$10 per yard equals \$920." (1-1-79)

132. OLD OR REPLACED PARTS (RULE 132).

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Inspection. Fail, upon request, to return or allow inspection of old or replaced parts upon completion of repairs or improvements. (1-1-79)

02. Retaining Old Parts. Retain old or replaced parts for reuse or resale, after request has been made for their return, unless such retention is made known to the consumer prior to performing any repairs or improvements, or unless the seller is able to demonstrate that he had made a bona fide price reduction for the newly installed parts in consideration for keeping the old or replaced parts, or unless the replacement was made under a warranty. (1-1-79)

133. -- 139. (RESERVED)

Subchapter N -- Time of Delivery or Performance Including Mail Order Sales
(Rules 140 -- 149)

140. GENERAL RULE (RULE 140).

In connection with any sale, except mail order sales, it is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Promising Delivery. Offer or promise prompt delivery or performance unless, at the time of the offer or promise, the seller has taken reasonable action to ensure such prompt delivery or performance. (1-1-79)

02. Failure to Deliver. Fail to deliver goods or perform services, which have been ordered in person or otherwise, within a reasonable time following a specified delivery or performance date or within a reasonable time following the receipt of payment, unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the specified delivery date, and unless the seller can further show that he has given timely notice to the consumer of any such delay. (1-21-92)

141. MAIL ORDER SALES (RULE 141).

In connection with any mail order sale, pursuant to CPR 33, it is an unfair and deceptive act or practice for a seller to fail to comply with the provisions of the Federal Trade Commission Rule on Mail Order Merchandise (16 C.F.R. 435). (7-1-93)

142. -- 149. (RESERVED)

Subchapter O -- Lay-Away Plans
(Rules 150 - 159)

150. GENERAL RULE (RULE 150).

It is an unfair and deceptive act or practice for a seller, in conjunction with a lay-away transaction, to: (1-21-92)

01. Misrepresent Lay-Away Policies. Misrepresent, in any way, the seller's policy with reference to a lay-away plan. (1-21-92)

02. Failure to Lay Aside Goods. Fail to actually lay aside the specific goods chosen by the consumer or exact duplicates, unless a clear and conspicuous disclosure to the contrary is made to the consumer. (1-21-92)

03. Lay-Away Time Periods. Fail to clearly and conspicuously disclose to the consumer that the specified goods or exact duplicates will be set aside only for a certain period of time, if such is the case. (1-21-92)

04. Duplicates. Deliver to the consumer after payments are completed, goods that are not identical or exact duplicates to those specified, unless informed, mutual consent has been obtained. (7-1-93)

05. Increase Price. Increase the price of the goods laid away after the original agreement has been made. (1-21-92)

06. Failure to Deliver. Fail to deliver to the consumer, upon request, at any time payment is made, a receipt showing the amount of that payment and the date thereof and, upon request, an itemized statement showing the amount previously paid and the amount still owing. (1-21-92)

151. REFUNDS OF LAY-AWAY PAYMENTS (RULE 151).

It is an unfair and deceptive act or practice for a seller to fail to clearly and conspicuously disclose, or to misrepresent in any manner: (1-21-92)

01. Possible Default or Cancellation. The seller's policy with reference to the consumer's possible default or cancellation. (1-21-92)

02. Refund Policy. The seller's policy with respect to refund of payments made prior to the consumer's default or cancellation. (1-21-92)

152. FORFEITURE AND DEFAULT (RULE 152).

If there is a penalty, charge or forfeiture for cancellation or default, written disclosure must be clearly and conspicuously furnished on the initial lay-away receipt and clearly and conspicuously posted at the lay-away desk. (1-21-92)

153. -- 159. (RESERVED)

Subchapter P -- Unfair Solicitation Practices at Other Than Trade Premises
(Rules 160 - 169)

160. DISCLOSURE REQUIREMENTS (RULE 160).

It is an unfair and deceptive act or practice for a seller to solicit a sale or order for sale of goods or services at other than appropriate trade premises, in person or by means of telephone, without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer, and before making any other statement, except a greeting, or asking the consumer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following: (1-21-92)

01. Solicitor's Identity. Stating the identity of the person making the solicitation. (1-1-79)

02. Trade Name of Seller. Stating the trade name of the seller represented by the person making the solicitation. (1-21-92)

03. Types of Goods or Services Offered. Stating the kind of goods or services being offered for sale. (1-21-92)

04. In-Person Contact. In the case of an "in person" contact, the seller making the solicitation shall, in addition to orally revealing the above information, show or display identification which states: (1-21-92)

a. The identity of the person making the solicitation; (1-1-79)

b. The trade name of the seller represented by the person making the solicitation; and (1-21-92)

c. The address of the place of business of one of such persons so identified. (1-1-79)

161. GENERAL RULE (RULE 161).

It is an unfair and deceptive act or practice for a seller, in soliciting a sale or order for the sale of goods or services,

either in person or by telephone, at other than appropriate trade premises, to: (1-21-92)

01. Misleading Plan. Use any plan, scheme, or ruse which misrepresents his true identity or purpose. (1-21-92)

02. Representations with Capacity to Mislead. Use any representations which have the capacity, tendency, or effect of misleading or deceiving a consumer acting reasonably under the circumstances in order to induce a sale, rental, lease, or order for the sale, rental, or lease of goods or services. (1-21-92)

03. Leaving Premises. Fail to promptly leave the premises at which a sales solicitation or presentation is made when the consumer has indicated he does not wish to buy, lease, rent, or order the offered goods or services, or has requested that the person leave the premises. (1-21-92)

162. PROHIBITED PRACTICES (RULE 162).
It is an unfair and deceptive act or practice for a seller: (7-1-93)

01. Misrepresentations About How or Why Consumer Selected. In soliciting a sale or order for the sale of goods or services, either in person or by telephone, at other than appropriate trade premises, to: (7-1-93)

a. Represent that the seller making the solicitation is making an offer to specially selected persons or that the consumer has been specifically selected, unless the selection process is designed to reach a particular type or types of persons; or (7-1-93)

b. Represent that the seller making the solicitation is conducting a survey, test, or research project, or is engaged in a contest or other venture to win a cash award, scholarship, vacation, or similar prize, if in fact the principal purpose or objective is to make a sale of goods or services or to obtain information to help identify sales prospects. (1-21-92)

02. Misleading Practices. In soliciting a sale or order for the sale of goods or services, either in person or by telephone, at other than appropriate trade premises, to misrepresent, directly or by implication: (7-1-93)

a. The identity of the seller, the person on whose behalf the seller is making solicitations, the seller's affiliation or association with other firms, businesses, or governmental entities, or the identity of the goods or services he offers to sell. For example, the X City Fire Department is putting on a fireman's ball. It hires a professional solicitor who is getting a percentage of the proceeds. The solicitor and his employees and agents should identify themselves on the telephone as follows: "I am Pat Telemarketer of XYZ Productions and I am calling for the X City Fire Department." (1-21-92)

b. The reasons for, existence of, or amounts of price reductions; (1-1-79)

c. The length of any sales presentation; (1-21-92)

d. The delivery or performance date; or (1-21-92)

e. The nature or purpose of any documents the consumer is requested or required to execute in connection with the purchase or lease of any goods or services. (1-21-92)

163. MAIL ORDER AND CATALOG SALES (RULE 163).
It is an unfair and deceptive act or practice for a seller engaged in trade and commerce at other than appropriate trade premises, to fail to disclose the legal name under which business is done and the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms. (1-21-92)

164. APPLICATION OF OTHER RULES (RULE 164).
Pursuant to CPR 5, subchapter P is not intended to contain the only rules governing solicitations or transactions occurring at other than appropriate trade premises. (7-1-93)

165. -- 169. (RESERVED)

Subchapter Q -- Cooling-Off Period for Door-to-Door Sales
(Rules 170 -- 179)

170. GENERAL RULE (RULE 170).

In connection with any door-to-door sale, it is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Written Disclosures. Fail to furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and street address of the seller, and the following statement in ten (10) point type in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. (1-21-92)

02. Notice of Cancellation. Fail to furnish each consumer, at the time he signs the door-to-door sales contract or otherwise agrees to buy goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten (10) point bold face type the following statement in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION
enter date of transaction

Date

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOOD DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (address of seller's place of business) NOT LATER THAN MIDNIGHT OF (Date). (1-21-92)

03. Completed Notice of Cancellation. Fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the seller, the address of the seller's place of

business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation. (1-21-92)

04. Purported Waivers. Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under subchapter Q, including, specifically, his right to cancel the sale in accordance with the provisions of subchapter Q. (7-1-93)

05. Oral Notice of Cancellation. Fail to inform each consumer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. (1-21-92)

06. Misrepresent Right to Cancel. Misrepresent in any manner the consumer's right to cancel. (1-21-92)

07. Failure to Honor Notice of Cancellation. Fail or refuse to honor any valid notice of cancellation by a consumer and within ten (10) business days after the receipt of such notice, to: (1-21-92)

a. Refund all payments made under the contract or sale; (1-1-79)

b. Return any goods or property traded in, in substantially as good condition as when received by the seller; and (1-21-92)

c. Cancel and return any negotiable instrument executed by the consumer in connection with the contract or sale and take any action necessary or appropriate to promptly terminate any security interest created in the transaction. (1-21-92)

08. Transferring Evidences of Indebtedness. Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased. (1-21-92)

09. Transferring Traded Goods. Transfer, sell, or assign any goods traded in prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased. (1-21-92)

10. Failure to Notify Concerning Return of Goods. Fail, within ten (10) business days of receipt of the consumer's notice of cancellation, to notify the consumer whether the seller intends to take possession of or abandon any goods previously shipped or delivered to the consumer under the cancelled contract. (1-21-92)

171. -- 179. (RESERVED)

Subchapter R -- Referral Sales
(Rules 180 - 189)

180. GENERAL RULE (RULE 180).
It is an unfair and deceptive act or practice for a seller to engage in any referral sale. (1-21-92)

181. ADDITIONAL REMEDIES AVAILABLE TO THE CONSUMER (RULE 181).
Pursuant to Section 28-32-411, Idaho Code, (Idaho Credit Code), if a consumer is induced by a violation of the referral sale prohibition to enter into a purchase, the agreement is unenforceable by the seller and the consumer, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed without any obligation to pay for them. However, this remedy applies only if the purchase is made on credit and only if the consumer is acquiring the goods or services primarily for personal, family, household or agricultural purposes as defined in the Credit Code. (1-21-92)

182. ELECTION OF REMEDIES (RULE 182).
The consumer may elect the remedy provided in CPR 181 as an alternative to any other remedy he may have under the Act. However, other remedies under the Act would be available to the consumer even if the purchase is not made on credit and/or even if the goods are acquired for a purpose other than personal, family, household, or agricultural purposes. (7-1-93)

183. -- 189. (RESERVED)

Subchapter S -- Pyramid and Chain Distribution Schemes
(Rules 190 - 199)

190. GENERAL RULE (RULE 190).

It is an unfair and deceptive act or practice for a seller to promote, offer, advertise, or grant participation in a pyramid or chain distribution scheme. (1-21-92)

191. PURPORTED LIMITATIONS (RULE 191).

A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or the fact that, in addition to the right to receive consideration for participation in the marketing plan, a person introduced into the plan actually receives something of value, does not, in and of itself, change the character of the marketing plan as a chain or pyramid distribution scheme. (1-21-92)

192. FACTORS (RULE 192).

In determining whether a promotion is a pyramid or chain distribution scheme, the following factors, among others, may be considered: (1-21-92)

01. Amount of Fees. Whether a substantial fee is required for entry and continued participation in the promotion. Requirement of a substantial fee suggests that the promotion is an unlawful pyramid or chain distribution scheme. (1-21-92)

02. Refund Policies. Whether the purchase of nonrefundable goods is required for entry and continued participation in the promotion or whether a consumer's right to a refund is subject to significant restrictions. Requirement of such purchase or purchases or significant restrictions placed on a consumer's right to obtain a refund suggests that the promotion is an unlawful pyramid or chain distribution scheme. (7-1-93)

03. Plan's Primary Focus. Whether the primary focus of the promotion is the opportunity for financial gain through the recruitment of more participants, not the sale of goods or services. Marketing programs based primarily upon the recruitment of other participants suggest that the promotion is an unlawful pyramid or chain distribution scheme. (1-21-92)

04. Price of Goods. Whether the goods, if any, for which the promotion allegedly exists to distribute, are inflated in price. An inflated price for the goods suggests that the promotion is an unlawful pyramid or chain distribution scheme. (1-21-92)

193. -- 199. (RESERVED)

Subchapter T -- Loan Broker Fees
(Rules 200 - 209)

200. GENERAL RULE (RULE 200).

It is an unfair and deceptive act or practice for a loan broker to: (7-1-93)

01. Prohibited Practices. Directly or indirectly receive any fee, interest, or other charge of any nature, including, but not limited to, payments to information providers, from a consumer until a loan or extension of credit is made to the consumer or a written commitment to loan or extend credit is delivered to the consumer by an exempt loan broker. (7-1-93)

02. Qualifying for a Loan. Advertise that all or most consumers or that consumers with bad credit or no credit histories will qualify for a loan. (7-1-93)

03. Conditions of Loan. Advertise loan brokering services without clearly and conspicuously

disclosing any material restrictions regarding obtaining a loan, the cost of the service, and the maximum period of time the loan broker will take to arrange or make the loan to the consumer. (7-1-93)

04. Written Disclosure. Fail to provide the consumer a written contract with the following information contained therein: (7-1-93)

a. The name, street address, and telephone number of the loan broker; (7-1-93)

b. The maximum period of time the loan broker will take to arrange or make the loan to the consumer; and (7-1-93)

c. The following statement in at least ten point, bold face type in immediate proximity to the space reserved in the contract for the signature of the consumer:

YOU THE CONSUMER ARE UNDER NO OBLIGATION TO PAY ANY FEE OR CHARGE OF ANY NATURE UNLESS AND UNTIL YOU RECEIVE THE MONEY FROM THE LOAN APPLIED FOR OR A WRITTEN COMMITMENT TO LOAN OR EXTEND CREDIT FROM A QUALIFIED LENDING INSTITUTION AS DEFINED BY IDAHO CONSUMER PROTECTION RULE 20.25, CODIFIED AT IDAPA 04.02.01.020.25. (7-1-93)

201. EXCEPTIONS (RULE 201).

CPR 200 does not apply to fees and charges authorized by the laws of the state of Idaho or the laws of the United States if the maximum charge and the manner of collecting the charge are set out in the law or in the rule or regulation adopted under law. (7-1-93)

202. -- 209. (RESERVED)

Subchapter U -- Preservation of Consumers' Claims and Defenses (Holder in Due Course)
(Rules 210 - 219)

210. GENERAL RULE (RULE 210).

It is an unfair and deceptive act or practice for a seller, directly or indirectly, to: (1-21-92)

01. Accept Contract Without Written Notice. Take or receive a consumer credit contract which fails to contain the following statement in at least ten (10) point, bold face type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (1-21-92)

02. Accept Monies Without Written Notice. Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan, unless any consumer credit contract made in connection with such purchase money loan contains the following statement in at least ten point, bold face type:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (1-21-92)

211. -- 219. (RESERVED)

Subchapter V -- Unordered Goods or Services
(Rules 220 - 229)

220. GENERAL RULE (RULE 220).

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

01. Send or Provide Unordered Goods or Services. Send or provide to a consumer unordered goods or services. (7-1-93)

02. Bills. Send any bill to a consumer for unordered goods or services. (1-21-92)

03. Delay or Disrupt Goods or Services. Interrupt, delay, terminate, cancel, or deny delivery of or other provision of goods or services to a consumer because the consumer has not paid for or returned the unordered goods or services. (1-21-92)

04. Requiring Consumer Consent. Require a consumer to consent or authorize the receipt of or provision for unordered goods or services as a condition of doing business with the person. (1-21-92)

221. -- 229. (RESERVED)

Subchapter W -- Automobile Advertising and Sales
(Rules 230 - 239)

230. OBJECTIVE (RULE 230).

It is the objective of subchapter W to implement the intent of the legislature as declared in Section 48-601, Idaho Code, by furthering truthful and accurate advertising and sales practices for the benefit of the citizens and motor vehicle dealers of this state by providing for motor vehicle advertising and sales rules applicable to motor vehicle dealers. (7-1-93)

231. APPLICATION OF OTHER RULES (RULE 231).

Pursuant to CPR 5, subchapter W is not intended to contain the only rules governing automobile advertising and sales practices. (7-1-93)

232. GENERAL ADVERTISING PRACTICES (RULE 232).

The following are unfair and deceptive advertising practices: (7-1-93)

01. Clear and Conspicuous Disclosure of Material Terms. The advertising of any motor vehicle for sale, lease, rent without clearly and conspicuously disclosing all material terms and conditions relating to the offer. Material terms include those without which the advertisement would have the capacity, tendency, or effect of misleading or deceiving consumers acting reasonably under the circumstances. (7-1-93)

02. Footnotes and Asterisks. Use of one (1) or more disclosures by footnote or asterisk which alone or in combination confuse, contradict, materially modify, or unreasonably limit a principal message of the advertisement. (1-21-92)

03. Print Size. Use of any print in type size so small as to be not readily noticeable. An advertisement is misleading if important disclosures made therein are relegated to small print and inconspicuously buried at the bottom of the page. (1-21-92)

04. Photographs and Illustrations. Use of inaccurate photographs or illustrations when describing specific automobiles. For example, advertising a fully-loaded car when the ad actually refers to a minimally-equipped automobile in text. (1-21-92)

05. Color Contrasts. Use of color contrasts which render the text confusing or difficult to read. (1-21-92)

06. Abbreviations. Advertising with abbreviations which are not commonly understood by the general public (e.g., abbreviations commonly understood--AC, AM/FM, AUTO, AIR, 2DR, CYL Dealer's Doc Fee, MSRP, and OAC) unless approved by federal or state law (e.g., terms allowed by the federal Truth in Lending Act, 15 U.S.C. Section 1601 et seq., such as "APR"). (7-1-93)

233. PRICE ADVERTISING (RULE 233).
It is an unfair and deceptive act or practice for a dealer to: (7-1-93)

01. Advertised Price. Advertise the price of a motor vehicle without including in the advertised price all costs to the consumer at the time of sale, or which are necessary or usual prior to delivery of such vehicle to the consumer, including without limitation, any costs of freight, delivery, dealer preparation, and any other charges of any nature; provided, however, the following may be excluded from the advertised price of the motor vehicle: (7-1-93)

a. Taxes, license, and title fees; and (1-21-92)

b. A dealer documentation service fee, as defined herein, so long as the advertisement clearly and conspicuously discloses, in close proximity to the advertised price, the amount of such fee and that the fee is a dealer imposed fee; i.e. PRICE DOES NOT INCLUDE \$_____ (insert actual amount charged for dealer documentation service fee) DEALER DOC FEE. (1-21-92)

02. Advertising Limitations. Fail to clearly and conspicuously disclose in an advertisement any material limitations including, but not limited to: (7-1-93)

a. The number of motor vehicles in stock subject to the offer if the number is not likely to meet reasonably expected public demand; (1-21-92)

b. The period of time during which the offer is in effect, if the offer is subject to a time limitation of fourteen (14) days or less or when an offer is within fourteen (14) days of its close; and (7-1-93)

c. Any other applicable restrictions to which the advertised price may be subject. (1-21-92)

03. Low Prices. Use the term "low prices" or words of similar meaning or import in the advertisement, unless the prices offered are lower than those usually offered by the dealer or other dealers in the same trade area. (7-1-93)

04. Lowest Prices, Guaranteed Lowest Prices. Advertise that motor vehicles cost less in a particular community or geographic area or use the terms "lowest prices," "guaranteed lowest prices," "prices lower than anyone else," "nobody can beat our prices," or words of similar meaning or import in the advertisement, unless the dealer, or dealer association in the case of cooperative dealer advertising, systematically monitors and continues to monitor competitive prices in the trade area and can substantiate such claims. (7-1-93)

05. Price Matching. Use terms "meet your best offer," or "we won't be undersold," or terms of similar meaning or import which suggest that a dealer will beat or match a competitor's price unless: (7-1-93)

a. The advertisement clearly and conspicuously discloses the dealer's price matching policy and any limitations; and (1-21-92)

b. Such policy does not require the presentation of any evidence which places an unreasonable burden on the consumer. (1-21-92)

06. Dealer's Cost. Except as required in CPR 233.07.a., advertise a motor vehicle using any reference to the term "dealer's cost," or that a motor vehicle is available for purchase at, above or below "cost." (7-1-93)

07. Invoice Pricing. Advertise that a motor vehicle is available for purchase at an amount below, at, or above “factory invoice,” “factory billing,” “manufacturer’s invoice,” or terms of similar meaning or import, unless: (7-1-93)

a. The advertisement uses the terms “factory invoice,” “manufacturer’s invoice,” or other terms that clearly convey that the invoice referred to is the factory or manufacturer’s invoice; (1-21-92)

b. The advertised reference to factory or manufacturer’s invoice price shall be the final price listed on the factory or manufacturer’s invoice; (1-21-92)

c. The following disclosure is clearly and conspicuously disclosed in the advertisement: “FACTORY INVOICE MAY NOT REFLECT DEALER’S ACTUAL COST”; and (1-21-92)

d. The original factory or manufacturer’s invoice, or a true and correct copy thereof, shall be readily available at the place of business for inspection by prospective customers. (1-21-92)

08. Vehicle Availability. Subject to CPR 233.01 and CPR 233.02, fail to allow consumers to purchase all motor vehicles described by the advertisement at the advertised price. If some motor vehicles in stock may not be purchased at the advertised prices, the advertisement shall clearly and conspicuously disclose that the advertised price applies only to a specified number of motor vehicles. Vehicle identification numbers for any motor vehicle advertised for sale by a dealer shall be readily available at the dealer’s place of business for inspection by customers. (7-1-93)

09. Buy-Down Rate. Advertise the sale of any motor vehicle at a “buy-down” rate, as that term is defined herein, without clearly and conspicuously disclosing in the advertisement the following: “BELOW MARKET RATE MAY AFFECT PURCHASE PRICE OF CAR.” (7-1-93)

10. Hidden Finance Charges. Fail to include hidden finance charges (i.e. the difference, if any, between the cash and credit price of a “buy-down” motor vehicle) in the Truth in Lending calculation and disclosure requirements. (7-1-93)

234. OTHER ADVERTISING PRACTICES (RULE 234).

It is an unfair and deceptive act or practice for a dealer to: (7-1-93)

01. Demonstrator Vehicles. Advertise any demonstrator vehicle without clearly and conspicuously disclosing: (7-1-93)

a. The year, make, and model of the motor vehicle; and (1-21-92)

b. That the motor vehicle is a “demonstrator” or has been previously driven. (1-21-92)

02. Executive or Official Vehicles. Advertise any executive or official vehicle: (7-1-93)

a. Without clearly and conspicuously disclosing the year, make, and model of the motor vehicle; (1-21-92)

b. Without clearly and conspicuously disclosing that the motor vehicle is an executive or official vehicle and has been previously driven, using the words “Pre-Driven,” or “Previously Driven,” or words of similar meaning; (1-21-92)

c. Without displaying the Used Car Buyers Guide on the motor vehicle as required by the Federal Trade Commission Rule on Used Motor Vehicles (16 C.F.R. 455); or (1-21-92)

d. By using any word or phrase which would lead a reasonable consumer to believe that the advertised motor vehicle is a new motor vehicle. (1-21-92)

03. Leased Vehicles. Advertise any leased vehicle: (7-1-93)

- a. Without clearly and conspicuously disclosing the year, make, and model of the motor vehicle; (1-21-92)
 - b. Without clearly and conspicuously disclosing that the motor vehicle is a leased vehicle; (1-21-92)
 - c. Without displaying the Used Car Buyers Guide on the motor vehicle as required by the Federal Trade Commission Rule on Used Motor Vehicles (16 C.F.R. 455); or (1-21-92)
 - d. By using any word or phrase which would lead a reasonable consumer to believe that the advertised motor vehicle is a new motor vehicle. (1-21-92)
- 04. Other Used Motor Vehicles.** Advertise any other used motor vehicle: (7-1-93)
- a. Without clearly and conspicuously disclosing the year, make, and model of the motor vehicle; (1-21-92)
 - b. Without displaying the Used Car Buyers Guide on the motor vehicle as required by the Federal Trade Commission Rule on Used Motor Vehicles (16 C.F.R. 455); or (1-21-92)
 - c. By using any word or phrase which would lead a reasonable consumer to believe that the advertised motor vehicle is a new motor vehicle. (1-21-92)
- 05. Dealer Rebates.** Advertise that a consumer will receive a payment of money, or that a payment will be made to a third person on the consumer's behalf, in conjunction with the purchase or lease of a motor vehicle, unless the payment is being offered by the manufacturer of the motor vehicle. A dealer may also advertise any manufacturer's rebate for which the manufacturer requires any financial participation by the dealer so long as the dealer clearly and conspicuously discloses in the advertisement the following disclosure: "DEALER PARTICIPATION IN THE REBATE PROGRAM MAY INCREASE VEHICLE PRICE BEFORE REBATE." (7-1-93)
- 06. Trade-In Allowances.** Advertise or offer a specific trade-in allowance (i.e., "\$2500 minimum trade-in"), including, without limitation, that the trade-in will be valued at a specific amount or guaranteed minimum amount if: (7-1-93)
- a. The price of the motor vehicle offered for sale is increased because of the amount of the allowance; (1-21-92)
- or
- b. The offer fails to disclose that it is conditioned upon the purchase of additional options or services, if such is the case. (1-21-92)
- 07. Trade-In Policies.** Advertise or offer a range of amounts for trade-ins (e.g., "up to \$1,000" or "as much as \$1,000"), unless the advertisement clearly and conspicuously discloses the criteria the dealer will use to determine the amount to be paid for a particular trade-in. Such criteria might include age, condition, or mileage of the motor vehicle. (7-1-93)
- 08. No Money Down.** Advertise using the phrase "no down payment," "no money down," or words of similar meaning, unless, subject to the consumer's credit approval, the dealer is willing to sell the advertised motor vehicle to a consumer without the requirement of a trade-in or prior payment of any kind. (7-1-93)
- 09. Dealer's Size.** Use statements as to the dealer's size, inventory, or sales volume to represent or imply that the dealer can and does sell automobiles at a lower price, as a result of such size, inventory, or volume, than do other dealers, unless such is the fact. (7-1-93)
- 10. Factory Outlet.** Advertise using the terms "Factory Outlet," "Authorized Distribution Center," or similar special affiliation, connection or relationship with the manufacturer that is greater or more direct than that of any other dealer, when, in fact, no such affiliation, connection, or relationship exists. (7-1-93)

11. Contract Add-Ons. Negotiate the terms of a sale and thereafter add the cost of items to the contract, including, without limitation, extended warranties, credit life, dealer preparation, or undercoating, to the contract without previously disclosing this to the consumer and without first obtaining the consumer's consent. (7-1-93)

235. CREDIT SALES ADVERTISING (RULE 235).

It is an unfair and deceptive act or practice for a dealer to: (7-1-93)

01. Disclosure Requirements. Fail to clearly and conspicuously disclose in connection therewith that the advertised credit terms are available "On Approved Credit," or the abbreviation, "OAC." In advertising credit terms, a dealer shall also comply with either CPR 235.01.a. or CPR 235.01.b. below: (7-1-93)

a. Credit terms advertised by a dealer shall be calculated on the basis of the total retail price of the advertised motor vehicle (which, for purposes of calculating credit terms must include any applicable dealer documentation service fee, as defined herein) plus taxes, license, and title fees, from which may be subtracted out only the amount of the advertised down payment; or (1-21-92)

b. The credit terms advertised by a dealer may be calculated exclusive of taxes, license, and title fees and the dealer's documentation service fee so long as the following statement (or a statement of similar meaning) is clearly and conspicuously disclosed in connection with the credit sale advertisement: "DOES NOT INCLUDE TAXES, TITLE, LICENSE FEES OR \$ _____ DEALER DOC FEE" (insert actual amount charged for dealer documentation service fee). (1-21-92)

02. Advertised Terms Unavailable. Advertise credit terms that are not actually available. (7-1-93)

03. Advertised Finance Rates. Advertise a finance rate (A.P.R.) without disclosing, if such is the fact, the following: (7-1-93)

a. That such rate is limited to certain models; (1-21-92)

b. That to take advantage of such a reduced rate, a consumer must purchase additional options or services; (1-21-92)

c. That taking advantage of the rate will increase the final price of the vehicle or options or services purchased; (1-21-92)

d. That the offer expires after a limited time period; or (1-21-92)

e. Any other conditions, qualifications, or limitations which materially affect the availability of such rate. (1-21-92)

04. Truth in Lending Disclosures. Fail to comply with the disclosure requirements of the federal Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. Section 226). Truth in Lending disclosures must be clear and conspicuous. (7-1-93)

236. TRUTH IN LEASING ADVERTISING (RULE 236).

It is an unfair and deceptive act or practice for a dealer to fail to comply with the disclosure requirements of the consumer leasing portions of the federal Truth in Lending Act (15 U.S.C. Section 1667 et seq.) and Regulation M promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. Section 213). Truth in Leasing disclosures must be clear and conspicuous. (7-1-93)

237. MOTOR VEHICLE SUBJECT-TO-FINANCING CONTRACTS (RULE 237).

01. Required Contract Disclosure. Unless specifically exempted in CPR 237.06, every subject-to-financing contract for the purchase of a motor vehicle in Idaho shall include the following disclosure in ten (10) point bold face type or a size at least three (3) points larger than the smallest type appearing in the contract or form:

YOU AND THE DEALER HAVE AGREED THAT THE MOTOR VEHICLE WILL BE DELIVERED TO YOU PRIOR TO THE PURCHASE. IF FINANCING CANNOT BE ARRANGED ON THE TERMS AND WITHIN THE TIME PERIOD AGREED UPON IN THE MOTOR VEHICLE PURCHASE CONTRACT, THE CONTRACT IS NULL AND VOID. (7-1-93)

02. Other Contractual Provisions. Nothing in CPR 237 is intended to prevent language from being included in a motor vehicle purchase contract specifying the responsibilities of the parties thereto in the event the contract becomes null and void pursuant to CPR 237. (7-1-93)

03. Trade-In Motor Vehicles. If a motor vehicle purchase contract has become null and void pursuant to CPR 237, the dealer must return the consumer's trade-in vehicle, if any, together with its title, if previously provided to the dealer, upon the consumer's return of the motor vehicle to the dealer. If the trade-in vehicle is not available, the dealer shall give the consumer the trade-in allowance within one business day. (7-1-93)

04. Subsequent Agreement. Nothing in CPR 237 is intended to prevent the parties to a motor vehicle purchase agreement from entering into a subsequent agreement for the purchase of the motor vehicle on different terms and conditions. (7-1-93)

05. Consumer's Copy. A copy of the disclosure specified in CPR 237.01 must be given to the consumer at the time the contract is signed. (7-1-93)

06. Exceptions. CPR 237 does not apply to sales transactions in which a dealer purchases a motor vehicle for resale. (7-1-93)

238. -- 999. (RESERVED)

**IDAPA 04
TITLE 11
CHAPTER 01**

04.11.01 – IDAHO RULES OF ADMINISTRATIVE PROCEDURE OF THE ATTORNEY GENERAL

**SUBCHAPTER A -- GENERAL PROVISIONS
(Rules 0 through 99 -- General Provisions)**

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Sections 67-5206(2), 67-5206(3) and 67-5206(4), Idaho Code. (3-24-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is “Idaho Rules of Administrative Procedure of the Attorney General.” (3-24-93)

02. Scope. This chapter has the following scope: Every state agency that conducts rulemaking or hears contested cases must adopt individual rules of procedure as required by this chapter. Further every state agency will be considered to have adopted the procedural rules of this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (3-24-93)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are available from the Office of the Attorney General, Statehouse, Boise, Idaho 83720. (3-24-93)

003. ADMINISTRATIVE APPEAL (RULE 3).

There is no provision for administrative appeals before the Attorney General under this chapter. This chapter governs administrative appeals before and within agencies that do not by rule opt out of some or all of this chapter. (3-24-93)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules required to be adopted by this chapter are public records. (3-24-93)

005. DEFINITIONS (RULE 5).

As used in this chapter: (3-24-93)

01. Administrative Code. The Idaho Administrative Code established in Chapter 52, Title 67, Idaho Code. (3-24-93)

02. Agency. 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. (3-24-93)

03. Agency Action. Agency action means: (3-24-93)

a. The whole or part of a rule or order; (3-24-93)

b. The failure to issue a rule or order; or (3-24-93)

c. An agency's performance of, or failure to perform, any duty placed on it by law. (3-24-93)

04. Agency Head. An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. (3-24-93)

- 05. Bulletin.** The Idaho Administrative Bulletin established in Chapter 52, Title 67, Idaho Code. (3-24-93)
- 06. Contested Case.** A proceeding which results in the issuance of an order. (3-24-93)
- 07. Coordinator.** The administrative rules coordinator prescribed in Section 67-5202, Idaho Code. (3-24-93)
- 08. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (3-24-93)
- 09. Final Rule.** A rule that has been adopted by an agency under the regular rulemaking process and that is in effect. (7-1-97)
- 10. License.** 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. (3-24-93)
- 11. Official Text.** The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and which is the only legally enforceable text of such document. (4-7-11)
- 12. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (3-24-93)
- 13. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (3-24-93)
- 14. Pending Rule.** A rule that has been adopted by an agency under the regular rulemaking process (i.e., proposal of rule in Bulletin, opportunity for written comment or oral presentation, and adoption of rule in Bulletin) and remains subject to legislative review. (7-1-97)
- 15. Person.** Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (3-24-93)
- 16. Provision of Law.** The whole or a part of the state or federal constitution, or of any state or federal:
- a.** Statute; or (3-24-93)
 - b.** Rule or decision of the court. (3-24-93)
- 17. Proposed Rule.** A rule published in the bulletin as provided in Section 67-5221, Idaho Code. (7-1-97)
- 18. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (3-24-93)
- 19. Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes:
- a.** Law or policy, or (3-24-93)
 - 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: (3-24-93)

- 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; (3-24-93)
- ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (3-24-93)
- iii. Intra-agency memoranda; or (3-24-93)
- 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. (3-24-93)

20. Rulemaking. The process for formulation, adoption, amendment or repeal of a rule. (3-24-93)

21. 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. (4-7-11)

22. Submitted for Review. A rule that has been provided to the legislature for review at a regular or special legislative session as provided in Section 67-5291, Idaho Code. (7-1-97)

23. Temporary Rule. 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. (7-1-97)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 04.11.01.000 et seq. For example, this section's citation is IDAPA 04.11.01.006. In documents submitted to an agency or issued by an agency, these rules may be cited as IRAP (Idaho Rules of Administrative Procedure) and action number less leading zeroes. For example, this rule may be cited as IRAP 6. (3-24-93)

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 7).

Each agency must individually adopt a rule of procedure giving the agency's mailing and street addresses, telephone number, text telephone number (if the agency has a text telephone), FAX number (if the agency has a FAX), and office hours for accepting filing of documents. In addition, if the agency has offices at more than one (1) location in the State at which documents may be filed in rulemakings or contested cases, the agency must also list the mailing and street addresses, telephone numbers and FAX numbers (if there are FAX numbers) of each of those offices. (7-1-94)

008. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 8).

Each agency must individually adopt a rule of procedure that lists the officer or officers with whom all documents in rulemakings or contested cases must be filed. This rule may require all filings to be made with one (1) officer, for example the agency director or the agency secretary, or may generally provide that all documents in a given rulemaking or contested case will be filed with an officer designated for the specific rulemaking or contested case. The rule must state whether copies in addition to the original must be filed with the agency. (3-24-93)

009. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure before agencies in contested cases, unless otherwise provided by rule, notice or order of the agency. Rules 800 through 860 govern procedure before agencies in rulemaking, unless otherwise provided by rule or notice of the agency. Every state agency that hears contested cases (except the Industrial Commission and the Public Utilities Commission) must use the procedures for contested cases adopted in these rules unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. Every state agency that conducts rulemaking must use the procedures for rulemaking adopted in this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (3-24-93)

051. REFERENCE TO AGENCY (RULE 51).

Reference to the agency in these rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, or presiding officer, as context requires. Reference to the agency head means to the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. (3-24-93)

052. LIBERAL CONSTRUCTION (RULE 52).

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (3-24-93)

053. COMMUNICATIONS WITH AGENCY (RULE 53).

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed or otherwise transmitted. (3-24-93)

054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).

Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (3-24-93)

055. SERVICE BY AGENCY (RULE 55).

01. Personal Service and Service by Mail. Unless otherwise provided by statute or these rules or the agency's rules, the officer designated by the agency to serve rules, notices, summonses, complaints, or orders issued by the agency may serve these documents by regular mail, or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. (4-7-11)

02. Electronic Service. If a party has appeared in a contested case or has not yet appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, and if authorized by statute, agency rule, notice or order, the officer designated to serve notices and orders in a contested case may serve those notices and orders by FAX or by e-mail in lieu of service by mail or personal service. (4-7-11)

03. When Service Complete. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a State employee or State agency, or when there is an electronic verification that a facsimile transmission or an e-mail has been sent. (4-7-11)

04. Persons Served. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (4-7-11)

05. Proof of Service. Every notice and order that the agency serves in a contested case must be accompanied by a proof of service stating the service date, each party or other person who was served, and the method of service. The agency may use a proof of service similar to those used by parties. See Rule 303. (4-7-11)

056. COMPUTATION OF TIME (RULE 56).

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not a Saturday, Sunday or a legal holiday. (3-24-93)

057. FEES AND REMITTANCES (RULE 57).

Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances

in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss.
(3-24-93)

058. -- 099. (RESERVED)

SUBCHAPTER B -- CONTESTED CASES
Rules 100 through 800 -- Contested Cases
Rules 101 through 400 -- Definitions and General Provisions
Rules 101 through 150 -- Informal and Formal Proceedings

100. INFORMAL PROCEEDINGS DEFINED (RULE 100).

Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 202, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case. (3-24-93)

101. INFORMAL PROCEDURE (RULE 101).

Statute authorizes and these rules encourage the use informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person. (3-24-93)

102. FURTHER PROCEEDINGS (RULE 102).

If statute provides that informal procedures shall be followed with no opportunity for further formal administrative review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Rule 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, at which time the parties may fully develop the record before the agency. (3-24-93)

103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 103).

Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceeding are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential and shall not be included in the agency record of a later formal proceeding. (3-24-93)

104. FORMAL PROCEEDINGS (RULE 104).

Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings. (3-24-93)

105. -- 149. (RESERVED)

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).

Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. (3-24-93)

151. APPLICANTS/CLAIMANTS/APPELLANTS (RULE 151).

Persons who seek any right, license, award or authority from the agency are called "applicants" or "claimants" or "appellants." (3-24-93)

152. PETITIONERS (RULE 152).

Persons not applicants who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called "petitioners." (3-24-93)

153. COMPLAINANTS (RULE 153).

Persons who charge other person(s) with any act or omission are called "complainants." In any proceeding in which the agency itself charges a person with an act or omission, the agency is called "complainant." (3-24-93)

154. RESPONDENTS (RULE 154).

Persons against whom complaints are filed or about whom investigations are initiated are called "respondents." (3-24-93)

155. PROTESTANTS (RULE 155).

Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called "protestants." (3-24-93)

156. INTERVENORS (RULE 156).

Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354 are called "intervenors." (3-24-93)

157. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 157).

Subject to Rules 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (3-24-93)

158. PERSONS DEFINED -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).

The term "person" includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in the administrative proceeding. Persons other than the persons named in Rules 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In kinds of proceedings in which persons other than the applicant or claimant or appellant, petitioner, complainant, or respondent would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called "Interested Persons." Interested persons may become protestants, intervenors or public witnesses. The agency must serve notice of such proceedings on all interested persons. (3-24-93)

159. -- 199. (RESERVED)

Rules 200 through 209
Representatives of Parties

200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).

The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, motion, or answer) must name the party's representative(s) for service and state the representative's(s') address(es) for purposes of receipt of all official documents. Unless authorized by order of the agency, no more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the first person signing the pleading will be considered the party's representative. (3-24-93)

201. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF (RULE 201).

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order or preliminary order prepared by a

hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and be available for cross-examination and participate in the hearing in the same manner as a party. (3-24-93)

202. REPRESENTATION OF PARTIES AT HEARING (RULE 202).

01. Appearances and Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (3-24-93)

a. Natural Person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, family member or next friend. (3-24-93)

b. A partnership may be represented by a partner, duly authorized employee, or attorney. (3-24-93)

c. A corporation may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

e. A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

02. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (3-24-93)

203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 203).

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives designated pursuant to Rule 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. (3-24-93)

204. WITHDRAWAL OF PARTIES (RULE 204).

Any party may withdraw from a proceeding in writing or at hearing. (3-24-93)

205. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 205).

A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. (3-24-93)

206. CONDUCT REQUIRED (RULE 206).

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (3-24-93)

207. -- 209. (RESERVED)

Rules 210 through 299
Pleadings -- In General

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any

pleading. A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (3-24-93)

211. -- 219. (RESERVED)

220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).

01. Applications/Claims/Appeals Defined. All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." (3-24-93)

02. Form and Content. Applications or claims or appeals should: (3-24-93)

- a.** Fully state the facts upon which they are based; (3-24-93)
- b.** Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based; and (3-24-93)
- c.** State the right, license, award, or authority sought. (3-24-93)

221. -- 229. (RESERVED)

230. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 230).

01. Petitions Defined. All pleadings requesting the following are called "petitions." (3-24-93)

- a.** Modification, amendment or stay of existing orders or rules; (3-24-93)
 - b.** Clarification, declaration or construction of the law administered by the agency or of a party's rights or obligations under law administered by the agency; (3-24-93)
 - c.** The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; (3-24-93)
 - d.** Reconsideration; or (3-24-93)
 - e.** Intervention. (3-24-93)
- 02. Form and Contents.** Petitions should: (3-24-93)
- a.** Fully state the facts upon which they are based; (3-24-93)
 - b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; (3-24-93)
 - c.** State the relief desired; and (3-24-93)
 - d.** State the name of the person petitioned against (the respondent), if any. (3-24-93)

231. -- 239. (RESERVED)

240. COMPLAINTS -- DEFINED -- FORM AND CONTENTS (RULE 240).

01. Complaints Defined. All pleadings charging other person(s) with acts or omissions under law

administered by the agency are called “complaints.” (3-24-93)

02. Form and Contents. Complaints must: (3-24-93)

a. Be in writing; (3-24-93)

b. Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (3-24-93)

c. Refer to statutes, rules, orders or other controlling law involved; (3-24-93)

d. State the relief desired; (3-24-93)

e. State the name of the person complained against (the respondent). (3-24-93)

241. -- 249. (RESERVED)

250. PROTESTS -- DEFINED -- FORM AND CONTENTS (RULE 250).

01. Protests Defined. All pleadings opposing an application or claim or appeal as a matter of right are called “protests.” (3-24-93)

02. Form and Contents. Protests should: (3-24-93)

a. Fully state the facts upon which they are based, including the protestant’s claim of right to oppose the application or claim; (3-24-93)

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (3-24-93)

c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. (3-24-93)

251. -- 259. (RESERVED)

260. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 260).

01. Motions Defined. All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” (3-24-93)

02. Form and Contents. Motions should: (3-24-93)

a. Fully state the facts upon they are based; (3-24-93)

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and (3-24-93)

c. State the relief sought. (3-24-93)

03. Oral Argument -- Time for Filing. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 565. (3-24-93)

261. -- 269. (RESERVED)

270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).

All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, protests, or motions are called "answers." (3-24-93)

01. Answers to Pleadings Other Than Motions. Answers to applications, claims, or appeals, complaints, petitions, or protests must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or a motion to dismiss is made within twenty-one (21) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Rule 700. Answers to applications or claims or appeals, complaints, petitions, or protests must admit or deny each material allegation of the application or claim or appeal, complaint, petition or protest. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (3-24-93)

02. Answers to Motions. Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion. The person or party answering the motion must do so with all deliberate and reasonable speed. In no event is a party entitled to more than fourteen (14) days to answer a motion or to move for additional time to answer. The presiding officer may act upon a prehearing motion under Rule 565. (3-24-93)

271. -- 279. (RESERVED)

280. CONSENT AGREEMENTS -- DEFINED: FORM AND CONTENTS (RULE 280).

01. Consent Agreements Defined. Agreements between the agency or agency staff and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called "consent agreements." Consent agreements are intended to require compliance with existing law. (3-24-93)

02. Requirements. Consent agreements must: (3-24-93)

a. Recite the parties to the agreement; and (3-24-93)

b. Fully state the conduct proscribed or prescribed by the consent agreement. (3-24-93)

03. Additional. In addition, consent agreements may: (3-24-93)

a. Recite the consequences of failure to abide by the consent agreement; (3-24-93)

b. Provide for payment of civil or administrative penalties authorized by law; (3-24-93)

c. Provide for loss of rights, licenses, awards or authority; (3-24-93)

d. Provide for other consequences as agreed to by the parties; and (3-24-93)

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (3-24-93)

281. -- 299. (RESERVED)

300. FILING DOCUMENTS WITH THE AGENCY -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) (RULE 300).

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX) if the agency's individual rule of practice lists a FAX number for that agency. Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (3-24-93)

301. FORM OF PLEADINGS (RULE 301).

01. Form. All pleadings, except those filed on agency forms, submitted by a party and intended to be part of an agency record must: (3-24-93)

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; (3-24-93)

b. State the case caption, case number and title of the document; (3-24-93)

c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (3-24-93)

d. Have at least one inch (1") left and top margins. (3-24-93)

02. Example. Documents complying with this rule will be in the following form:

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
FAX Number of Representative (if there is one)
Attorney/Representative for (Name of Party)

BEFORE THE AGENCY

(Title of Proceeding)

CASE NO.

(TITLE OF DOCUMENT)

(3-24-93)

302. SERVICE ON PARTIES AND OTHER PERSONS (RULE 302).

All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with the original filing with the officer designated by the agency to receive filings in the case. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. (3-24-93)

303. PROOF OF SERVICE (RULE 303).

Every document that a party or interested persons files with and intends to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have
this day _____ of _____, _____, served the
foregoing (name(s) of document(s)) upon all parties
of record in this proceeding, (by delivering a copy
thereof in person: (list names)) (by mailing a copy
thereof, properly addressed with postage prepaid, to:
(list names and addresses)).

(by facsimile transmission to: (list names and FAX numbers))

(by e-mail to: (list names and e-mail addresses)).

(Signature)

(4-7-11)

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).

Defective, insufficient or late pleadings may be returned or dismissed. (3-24-93)

305. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 305).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. (3-24-93)

306. -- 349. (RESERVED)

Rules 350 through 399
Intervention -- Public Witnesses

350. ORDER GRANTING INTERVENTION NECESSARY (RULE 350).

Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. (3-24-93)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (3-24-93)

352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (3-24-93)

353. GRANTING PETITIONS TO INTERVENE (RULE 353).

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. (3-24-93)

354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).

No order granting a petition to intervene will be acted upon fewer than seven (7) days after its filing, except in a hearing in which any party may be heard. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene. (3-24-93)

355. PUBLIC WITNESSES (RULE 355).

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 558 and 560, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analyses or detailed exhibits must comply with Rule 530 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. (3-24-93)

356. -- 399. (RESERVED)

Rules 400 through 499
Declaratory Rulings and Orders --
Hearing Officers -- Presiding Officers

Rules 400 through 409
Declaratory Rulings

400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS (RULE 400).

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. (3-24-93)

01. Form. The petition shall: (3-24-93)

a. Identify the petitioner and state the petitioner's interest in the matter; (3-24-93)

b. State the declaratory ruling that the petitioner seeks; and (3-24-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (3-24-93)

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

401. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 401).

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. (3-24-93)

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (RULE 402).

01. Final Agency Action. The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. (3-24-93)

02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

a. This is a final agency action issuing a declaratory ruling. (3-24-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: (3-24-93)

i. A hearing was held; (3-24-93)

ii. The declaratory ruling was issued; (3-24-93)

iii. The party appealing resides, or operates its principal place of business in Idaho; or (7-1-97)

iv. The real property or personal property that was the subject of the declaratory ruling is located. (3-24-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. (3-24-93)

403. -- 409. (RESERVED)

Rules 410 through 499
Hearing Officers -- Presiding Officers

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).

A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. (3-24-93)

411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD (RULE 411).

Agency heads are not hearing officers, even if they are presiding at contested cases. The term "hearing officer" as used in these rules refers only to officers subordinate to the agency head. (3-24-93)

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).

Pursuant to Section 67-5252, Idaho Code, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a presiding officer and any party shall have a right to move to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the case 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 reason provided by law or for any cause for which a judge is or may be disqualified. Any party may, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or 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 the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer's determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 59-704 and 67-5252(4), Idaho Code. (3-24-93)

413. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 413).

The scope of hearing officers' authority may be restricted in the appointment by the agency. (3-24-93)

01. Scope of Authority. Unless the agency otherwise provides hearing, officers have the standard scope of authority, which is: (3-24-93)

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; (3-24-93)

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; (3-24-93)

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and (3-24-93)

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer. (3-24-93)

02. Limitation. The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer's authority could be limited to scope Rule 413.01.c. (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers may be given authority with regard to the agency's rules as provided in Rule 416. (3-24-93)

414. PRESIDING OFFICER(S) (RULE 414).

One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. When more than one officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer. (3-24-93)

415. CHALLENGES TO STATUTES (RULE 415).

A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. (3-24-93)

416. REVIEW OF RULES (RULE 416).

When an order is issued by the agency head in a contested case, the 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. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. (3-24-93)

417. EX PARTE COMMUNICATIONS (RULE 417).

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, when a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (3-24-93)

418. -- 419. (RESERVED)

420. CONTRAST BETWEEN AGENCY'S PROSECUTORIAL/INVESTIGATIVE AND ADJUDICATORY FUNCTIONS (RULE 420).

When statute assigns to an agency both (1) the authority to initiate complaints or to investigate complaints made by the public, and (2) the authority to decide the merits of complaints, the agency is required to perform two distinct functions: prosecutorial/investigative and adjudicatory. In light of these dual functions, Rules 420 through 429 set forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers in processing these complaints or responding to citizen inquiries. As used in Rules 420 through 429, the term agency head means the officer or officers who exercise the agency's ultimate adjudicatory authority and includes individual members of a multimember board or commission comprising the agency head when a multimember board of commission exercises ultimate adjudicatory authority. These rules do not apply to elected constitutional officers in the exercise of their constitutional duties, either individually or in constitutional boards or commissions. (1-1-95)

01. Prosecutorial/Investigative Function. The prosecutorial/investigative function (including issuing a complaint) can be performed exclusively by agency attorneys and agency staff. When required or allowed by statute, the agency head may participate in or supervise investigations preceding the issuance of a complaint and may supervise the agency attorneys and agency staff conducting the prosecution of the complaint issued by the agency head, but the agency head (or members of the agency head) shall not participate in the prosecution of a formal contested case hearing for a complaint issued by the agency unless the agency head or that member does not participate in the adjudicatory function. The investigative function includes gathering of evidence outside of formal contested case proceedings. The prosecutorial function includes presentation of allegations or evidence to the agency head for determination whether a complaint will be issued, the issuance of a complaint when complaints are issued without the involvement of an agency adjudicator, and presentation of evidence or argument and briefing on the record in a formal contested case proceeding. (1-1-95)

02. Adjudicatory Function. The adjudicatory function is performed by the agency head or the agency head's designee and/or hearing officers. The adjudicatory function includes: deciding whether to issue a complaint upon the basis of allegations before the agency when the decision to issue the complaint is made by an agency head acting in an adjudicatory capacity, i.e., when presented by agency staff in a formal setting with the question whether a complaint shall be issued; deciding whether to accept a consent order or other settlement of a complaint when the decision to accept a consent order or other settlement is made by an agency head acting in an adjudicatory capacity; and deciding the merits of a complaint following presentation of evidence in formal contested case proceedings. The adjudicatory function also includes agency attorneys' advice to the agency head or hearing officer in the performance of any adjudicatory functions. (1-1-95)

421. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR AGENCY ISSUANCE OF A COMPLAINT (RULE 421).

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers upon receipt of a public inquiry whether, or public recommendation that, the agency issue a complaint. (1-1-95)

01. The Agency Head. When the public contacts the agency head to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the agency head may: explain the agency's procedures; explain the agency's jurisdiction or authority (including the statutes or rules administered by the agency); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency. When the agency head issues complaints, the agency head may discuss whether given allegations would, in the agency head's opinion, warrant the issuance of a complaint or warrant direction to staff to pursue further investigation. No statement of the agency head in response to a public inquiry constitutes a finding of fact or other decision on the underlying matter. (1-1-95)

02. The Agency Attorney. When the public contacts an agency attorney to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the agency attorney may: explain the agency's procedures; explain the agency's jurisdiction or authority (including an explanation of the statutes or rules administered by the agency); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency. An agency attorney assigned to a prosecutorial/investigative role may discuss whether given allegations would, in the attorney's opinion, warrant the issuance of a complaint or warrant direction to staff to pursue further investigation. The agency is not bound by the attorney's advice or recommendations, and the attorney should notify the public that the agency is not obligated to follow the attorney's advice or recommendations. (1-1-95)

03. The Agency Staff. When the public contacts the agency staff to inquire whether a complaint should be issued or to recommend that a complaint be issued, a member of the agency staff authorized to respond to public inquiries about complaints may: explain the agency's procedures; explain the agency's jurisdiction or authority (including an explanation of the statutes or rules administered by the agency); direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency; and express an opinion whether given allegations would, in the agency staff's opinion, warrant the issuance of a complaint or warrant agency staff's further investigation. The agency is not bound by the agency staff's advice or recommendations, and the agency staff should notify the public that the agency is not obligated to follow the agency staff's advice or recommendations. (1-1-95)

04. Hearing Officers. When the public contacts a hearing officer to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the hearing officer should not discuss the matter, but should refer the member of the public to other agency personnel. (1-1-95)

422. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS BEFORE COMPLAINT ISSUED (RULE 422).

This rule sets forth procedures to be followed when a consent agreement, stipulated settlement, or other settlement is negotiated before a complaint is filed. (1-1-95)

01. Negotiations. As authorized by the agency, an attorney assigned to a prosecutorial/investigative role or members of the agency staff may negotiate consent agreements or other settlements with any person who might later be the subject of a complaint. When the agency head issues complaints, the agency head may participate in the negotiations. Otherwise, no member of the agency head, no attorney assigned to advise or assist the agency

head in its adjudicatory function, and no hearing officer may participate in these negotiations, but the agency head may have rules or guidelines for issuance of consent agreements or other general policy statements available to guide individual negotiations. (1-1-95)

02. Presentation of Consent Agreement to Agency Head. When the consent agreement provides, or the persons signing the consent agreement contemplate, that the consent agreement must be presented to the agency head for approval, the consent agreement may be presented to the agency head by representatives of any party, unless the agreement provides to the contrary. Any consent agreement presented to the agency head must be served on all parties and on the agency staff. (1-1-95)

03. Agency Head Consideration of Consent Agreement. A consent agreement that is presented to the agency head for approval, disapproval or modification must be reviewed under this rule. The agency head may accept or reject the consent agreement, indicate how the consent agreement must be modified to be acceptable, or inform the parties what further information is required for the agency head's consideration of the consent agreement. When a consent agreement is rejected, no matter recited in the rejected consent agreement may be used as an admission against a party in any later proceeding before the agency, and any such matter must be proven by evidence independent of the consent agreement. (1-1-95)

423. PROCEDURES AFTER ISSUANCE OF A COMPLAINT AND BEFORE THE AGENCY HEAD'S CONSIDERATION OF THE COMPLAINT (RULE 423).

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers after a complaint is issued, while investigation or discovery is underway, while a hearing is conducted, and before the recommended order or preliminary order of the hearing officer is submitted to the agency head (if a hearing officer hears the complaint and issues a recommended or preliminary order). (1-1-95)

01. The Agency Head. (1-1-95)

a. Prohibited Contacts--allowable Managerial Reporting. Unless authorized or required by statute, the agency head shall not discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. The agency head may request periodic progress reporting on staff preparation from an executive director or other staff member in charge. For example, the agency head may ask whether the agency staff will be prepared to present its case by a given date. As required to perform statutory supervisory duties, the agency head may approve or disapprove expenditures associated with the prosecution, authorize retention of experts or outside counsel for the prosecution, address policy issues that may affect the prosecution, and otherwise discharge the agency head's statutory management and supervisory duties. (1-1-95)

b. Allowed Contacts. The agency head may discuss the substance of the complaint with agency attorneys and agency staff who are not involved in the prosecution or investigation of the complaint. When one or more members of the agency head sits with a hearing officer to hear the contested case, any member of the agency head not participating in the prosecution and not supervising prosecutorial/investigative personnel may discuss the substance of the complaint with the hearing officer. (1-1-95)

02. The Agency Attorney. (1-1-95)

a. Prosecutorial/Investigative Attorneys. Except as authorized by Subsection 423.01.a. of this rule, no agency attorney involved in the investigation or prosecution of a complaint shall discuss the substance of the complaint ex parte with the agency head, a hearing officer assigned to hear the complaint, or with any agency attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint; provided, that when a hearing officer has made a bench ruling and has on the record directed the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when a hearing officer has by written document served on all parties ordered the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the agency attorney may contact the hearing officer in connection with the preparation of the written document to be submitted to the hearing officer. (1-1-95)

b. Advisory Attorneys. Except as authorized by Subsection 423.01.a. of this rule, no agency attorney

assigned to advise or assist the agency head or hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. An agency attorney assigned to advise or assist the agency head or hearing officer may discuss the substance of the complaint with the hearing officer or agency head. (1-1-95)

03. The Agency Staff. (1-1-95)

a. Prosecutorial/Investigative Staff. Except as authorized by Subsection 423.01.a. of this rule, no member of the agency staff involved in the investigation or prosecution of the complaint shall discuss the substance of the complaint ex parte with the agency head, a hearing officer assigned to hear the complaint, or with any agency attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint, except as provided in Subsection 423.04.b. of this rule and in Subsections 425.01 and 425.03. (1-1-95)

b. Advisory Staff. Except as authorized by Subsection 423.01.a. of this rule, no agency staff assigned to advise or assist the agency head or hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. Agency staff assigned to advise or assist the agency head or hearing officer may discuss the substance of the complaint with the hearing officer or agency head. (1-1-95)

04. Hearing Officers. Hearing officers may discuss the substance of the complaint with attorneys of the agency assigned to advise or assist the hearing officer and with other hearing officers. Hearing officers may discuss the substance of the complaint with the agency head as authorized by Subsection 423.01.b of this rule. No hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint; except: (1-1-95)

a. Bench Rulings, etc. When a hearing officer has made a bench ruling and has on the record directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when a hearing officer has by written document served on all parties directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the hearing officer may contact the attorney for the party or the agency attorney in connection with the preparation of the written document to be submitted to the hearing officer. (1-1-95)

b. Technical Calculations. If the consideration of the complaint requires technical calculations, etc., that can most efficiently be performed by a person who participated in the investigation or hearing, the hearing officer may direct that person to perform the calculations, etc., for the hearing officer's use in the recommended order or preliminary order. (1-1-95)

424. HEARING OFFICERS (RULE 424).

No hearing officer may discuss the substance of a complaint ex parte with any agency attorney or agency staff involved in the investigation or prosecution of the complaint, with any representative of any party, or with any member of the public at large at any stage of the agency's consideration of the complaint or pending judicial review of the agency's decision in the complaint, except as allowed in Subsections 423.02.a. and 423.04. A hearing officer may consult with any other hearing officer. A hearing officer may consult with the agency head as authorized by Subsections 423.01.b. and 425.01. A hearing officer may consult with an agency attorney assigned to advise or assist the hearing officer. The agency may appoint as a hearing officer the agency attorney who will advise or assist the agency head in consideration of the complaint, but this agency attorney cannot participate in the prosecution of the complaint or have ex parte contact with any party to the complaint or the agency's prosecutorial/investigative staff. (1-1-95)

425. AGENCY HEAD'S CONSIDERATION OF RECOMMENDED OR PRELIMINARY ORDER (RULE 425).

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff, and hearing officers after the hearing officer's recommended order or preliminary order has been placed before the agency head for review. (1-1-95)

01. The Agency Head. In considering the hearing officer's recommended order or preliminary order,

the agency head may consult with an agency attorney assigned to advise or assist the agency head and with agency staff who did not participate in the investigation or prosecution of the complaint. As allowed in Subsection 423.01.b. when one (1) or more members of the agency head and the hearing officer hear the complaint, the agency head may consult with the hearing officer who heard the complaint and prepared the recommended order or preliminary order or with other hearing officers. The agency head shall not discuss the substance of the complaint *ex parte* with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint; except: (1-1-95)

a. Bench Rulings, etc. When the agency head has made a bench ruling and has on the record directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when the agency head has by written document served on all parties directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the agency head may contact the attorney for the party or the agency attorney in connection with the preparation of the written document to be submitted to the agency head. (1-1-95)

b. Technical Calculations. If the consideration of the complaint requires technical calculations, etc., that can most efficiently be performed by a person who participated in the investigation or hearing, the agency head may direct that person to perform the calculations, etc., for the agency head's use in the final order. (1-1-95)

02. The Agency Attorney. (1-1-95)

a. Prosecutorial/Investigative Attorneys. No agency attorney involved in the investigation or prosecution of a complaint shall consult with the agency head considering the hearing officer's recommended order or preliminary order, except as provided in Subsections 423.01 and 423.02.a. An agency attorney who was involved in the investigation or prosecution of the complaint may attend public meetings of the agency head that consider complaints and may respond to questions from the agency head so long as the meetings have been noticed to all parties and all parties have the same opportunity to respond to questions from the agency head as the agency's prosecutorial/investigative attorneys. (1-1-95)

b. Advisory Attorneys. An agency attorney assigned to advise or assist the agency head in consideration of the complaint may consult with the agency head in preparation for or while the agency head is considering the hearing officer's recommended order or preliminary order or draft final order when one or more members of the agency head heard the case with the hearing officer. (1-1-95)

03. The Agency Staff. (1-1-95)

a. Prosecutorial/Investigative Staff. No member of the agency staff involved in the investigation or prosecution of the complaint shall consult with the agency head in its consideration of the recommended order or preliminary order, but a member of the agency staff who participated in the investigation or prosecution of the complaint may provide technical computations, etc., at the direction of the agency head as provided in Subsection 425.01 of this rule. (1-1-95)

b. Advisory Staff. Any member of the agency staff assigned to advise or assist the agency head may consult with the agency head at the agency head's direction. (1-1-95)

04. Hearing Officers. No hearing officer shall consult with any person other than the agency head or attorneys assigned to advise or assist the agency head during the agency head's consideration of the hearing officer's recommended order or preliminary order. A hearing officer may consult with a member of the agency head or the entire agency head or attorneys assigned to advise or assist the agency head only as allowed by Subsections 423.01.b. and 423.04 and Subsection 425.01.a. of this rule when one (1) or more members of the agency head and the hearing officer heard the complaint. (1-1-95)

426. -- 499. (RESERVED)

Rules 500 through 699
Post-Pleading Procedure

Rules 500 through 509
Alternative Dispute Resolution (ADR)

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, factfinding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (3-24-93)

501. NEUTRALS (RULE 501).

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (3-24-93)

502. CONFIDENTIALITY RULE 502).

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or agency rule to be made public. (3-24-93)

503. -- 509. (RESERVED)

Rules 510 through 519
Prehearing Conferences

510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).

The presiding officer may by order or notice issued to all parties and to all interested persons as defined in Section 158 convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery when discovery is authorized before the agency, arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-97)

511. NOTICE OF PREHEARING CONFERENCE (RULE 511).

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act (See Rule 551). (3-24-93)

512. RECORD OF CONFERENCE (RULE 512).

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. (3-24-93)

513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (3-24-93)

514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).

Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences in a contested case are not part of the record. (3-24-93)

515. -- 519. (RESERVED)

Rules 520 through 549
Discovery-Related Prehearing Procedures

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized by these rules in contested cases are: (7-1-97)

- a.** Depositions; (3-24-93)
- b.** Production requests or written interrogatories; (3-24-93)
- c.** Requests for admission; (3-24-93)
- d.** Subpoenas; and (3-24-93)
- e.** Statutory inspection, examination (including physical or mental examination), investigation, etc. (3-24-93)

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, when discovery is authorized before the agency, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (7-1-97)

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

Parties may agree between or among themselves to provide for discovery without reference to an agency's statutes, rules of procedure, or orders. Otherwise no party before the agency is entitled to engage in discovery unless discovery is authorized before the agency, the party moves to compel discovery, and the agency issues an order directing that the discovery be answered. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to compel discovery. (7-1-97)

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).

All parties to a proceeding have a right of discovery of all other parties to a proceeding as allowed by Rule 521 and the agency's authorizing statutes and rules. Rules 523 through 525, 527 and 528 set forth the scope of various forms of discovery when those forms of discovery are authorized before the agency, but do not create an independent right of discovery. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (7-1-97)

523. DEPOSITIONS (RULE 523).

Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (3-24-93)

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).

Production requests or written interrogatories and requests for admission may be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (3-24-93)

525. SUBPOENAS (RULE 525).

The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (3-24-93)

526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (RULE 526).

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. (3-24-93)

527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 527).

Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. (3-24-93)

528. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 528).

Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 527, and objections to discovery must be filed and served as provided in the order compelling discovery. (3-24-93)

529. EXHIBIT NUMBERS (RULE 529).

The agency assigns exhibit numbers to each party. (3-24-93)

530. PREPARED TESTIMONY AND EXHIBITS (RULE 530).

Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony. (3-24-93)

531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (3-24-93)

532. PROTECTIVE ORDERS (RULE 532).

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. (3-24-93)

533. -- 549. (RESERVED)

Rules 550 through 599
Hearings -- Miscellaneous Procedure

550. NOTICE OF HEARING (RULE 550).

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy of the rules of procedure. (3-24-93)

551. FACILITIES AT OR FOR HEARING AND ADA REQUIREMENTS (RULE 551).

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act (e.g., sign language interpreters, Braille copies of documents) in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be made. (3-24-93)

552. HOW HEARINGS HELD (RULE 552).

Hearings may be held in person or by telephone or 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. (3-24-93)

553. CONDUCT AT HEARINGS (RULE 553).

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. (3-24-93)

554. CONFERENCE AT HEARING (RULE 554).

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. (3-24-93)

555. PRELIMINARY PROCEDURE AT HEARING (RULE 555).

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (3-24-93)

556. CONSOLIDATION OF PROCEEDINGS (RULE 556).

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. (3-24-93)

557. STIPULATIONS (RULE 557).

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (3-24-93)

558. ORDER OF PROCEDURE (RULE 558).

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (3-24-93)

559. TESTIMONY UNDER OATH (RULE 559).

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. (3-24-93)

560. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 560).

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (3-24-93)

561. CONTINUANCE OF HEARING (RULE 561).

The presiding officer may continue proceedings for further hearing. (3-24-93)

562. RULINGS AT HEARINGS (RULE 562).

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and the presiding officer may refer or defer rulings to the agency head for determination. (3-24-93)

563. ORAL ARGUMENT (RULE 563).

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (3-24-93)

564. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 564).

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties, or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order of the officer and ask the parties for comment upon the officer's proposed order. (3-24-93)

565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond. (3-24-93)

566. JOINT HEARINGS (RULE 566).

The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. (3-24-93)

567. -- 599. (RESERVED)

Rules 600 through 609
Evidence in Contested Cases

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).

Evidence should be taken by the agency to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. (3-24-93)

601. DOCUMENTARY EVIDENCE (RULE 601).

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. (3-24-93)

602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of 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 of the material noticed, including any agency staff memoranda and data. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. (3-24-93)

603. DEPOSITIONS (RULE 603).

Depositions may be offered into evidence. (3-24-93)

604. OBJECTIONS -- OFFERS OF PROOF (RULE 604).

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head. (3-24-93)

605. PREPARED TESTIMONY (RULE 605).

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Rule 600. (3-24-93)

606. EXHIBITS (RULE 606).

Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without advance approval of the presiding officer. (3-24-93)

607. -- 609. (RESERVED)

Rules 610 through 649
Settlements

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. (3-24-93)

611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (3-24-93)

612. CONSIDERATION OF SETTLEMENTS (RULE 612).

Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. (3-24-93)

613. BURDENS OF PROOF (RULE 613).

Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (3-24-93)

614. SETTLEMENT NOT BINDING (RULE 614).

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. (3-24-93)

615. -- 649. (RESERVED)

Rules 650 through 699
Records for Decisions

650. RECORD FOR DECISION (RULE 650).

01. Requirement. The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. (3-24-93)

02. Contents. The record for a contested case shall include: (3-24-93)

a. All notices of proceedings; (3-24-93)

b. All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (3-24-93)

c. All intermediate or interlocutory rulings of hearing officers or the agency head; (3-24-93)

d. All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (3-24-93)

e. All offers of proof, however made; (3-24-93)

f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (3-24-93)

g. All evidentiary rulings on testimony, exhibits, or offers of proof; (3-24-93)

h. All staff memoranda or data submitted in connection with the consideration of the proceeding; (3-24-93)

i. A statement of matters officially noticed; and (3-24-93)

j. All recommended orders, preliminary orders, final orders, and orders on reconsideration. (3-24-93)

651. RECORDING OR REPORTING OF HEARINGS (RULE 651).

All hearings shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. (7-1-97)

652. -- 699. (RESERVED)

Rules 700 through 799
Agency Orders and Review of Agency Orders

Rules 700 through 710
Defaults

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR (RULE 700).

If an applicant or claimant or appellant, petitioner, complainant, or moving party fails to appear at the time and place set for hearing on an application or claim or appeal, petition, complaint, or motion, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (3-24-93)

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (3-24-93)

702. ISSUANCE OF DEFAULT ORDER (RULE 702).

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. If authorized by statute or rule, costs may be assessed against a defaulting party. (3-24-93)

703. -- 709. (RESERVED)

Rules 710 through 789
Interlocutory, Recommended, Preliminary and
Final Orders -- Review or Stay of Orders

710. INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (3-24-93)

711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (3-24-93)

712. -- 719. (RESERVED)

720. RECOMMENDED ORDERS (RULE 720).

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. (3-24-93)

02. Content. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (3-24-93)

b. Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding. (3-24-93)

c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one (21) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee of the agency head) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-24-93)

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS (RULE 730).

01. Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. (3-24-93)

02. Content. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (3-24-93)

b. Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days

to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (3-24-93)

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (3-24-93)

d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-24-93)

e. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (3-24-93)

- i. A hearing was held, (3-24-93)
- ii. The final agency action was taken, (3-24-93)
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or (7-1-97)
- iv. The real property or personal property that was the subject of the agency action is located. (3-24-93)

f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (3-24-93)

731. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Definition. Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code. 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. (3-24-93)

02. Content. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

a. This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. (3-24-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (3-24-93)

- i. A hearing was held, (3-24-93)
 - ii. The final agency action was taken, (3-24-93)
 - iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or (7-1-97)
 - iv. The real property or personal property that was the subject of the agency action is located. (3-24-93)
- c.** An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (3-24-93)

741. ORDERS REGARDING COSTS AND/OR FEES (RULE 741).

01. Scope of Rule. This rule provides procedures for considering requests for costs and/or fees (including attorneys' fees) when an agency has authority to award costs and/or fees under other provisions of law. This rule is not a source of authority for awarding costs and/or fees. (4-7-11)

02. Time for Filing for Costs and/or Fees Awarded in Final Order or Preliminary Order. Unless otherwise provided by statute or rule of the agency: (4-7-11)

a. Minimum time for filing. When a final order or a preliminary order of the agency awards costs and/or fees to a party or to the agency itself, the agency must allow no fewer than fourteen (14) days from the service date of the final order or the preliminary order for the party to whom costs and/or fees were awarded or for the agency to file necessary papers (e.g., a memorandum of costs, affidavits, exhibits, etc.) quantifying and otherwise supporting costs or fees, or both, that will be claimed or a motion to extend the time to file for costs and fees. (4-7-11)

b. Longer time allowed. The final order or preliminary order of the agency may extend the time to file papers for costs and/or fees beyond fourteen (14) days after the service date of the final order or preliminary order. (4-7-11)

c. When time not set forth. If statute, rules of the agency, and the final order or preliminary order of the agency are silent on the time for filing for costs and/or fees the deadline for filing for costs and/or fees and/or for moving for an extension of the time to file for costs and fees is fourteen (14) days from the service date of the final order or preliminary order. (4-7-11)

d. Untimely filing. The agency may exercise its discretion to consider and grant an untimely filing for costs and/or fees for good cause shown. (4-7-11)

e. Contents of filing. No particular form for filing for costs and fees is required, but in the absence of a statute or rule providing for standard costs and/or fees the papers supporting a claim for costs and/or fees should ordinarily contain an affidavit or declaration under oath detailing the costs and/or fees claimed. (4-7-11)

f. Supplemental filings. Paragraphs 741.02.a. through 741.02.e. of this rule do not prohibit a party or the agency from supplementing a filing for costs and/or fees. (4-7-11)

03. Time for Petitioning for Costs and/or Fees When Costs and/or Fees Not Awarded in Final Order or Preliminary Order. Unless otherwise provided by statute: (4-7-11)

a. Petition for reconsideration. When a final order or preliminary order of the agency does not award costs or fees to a party, and a party contends that the party is entitled to an award of costs and/or fees the party must file a petition for reconsideration addressing costs and/or fees within fourteen (14) days of the service date of the final order or preliminary order if the party wishes the agency to award costs and/or fees. (4-7-11)

b. Combination with other issues. The petition for reconsideration on costs and/or fees may be combined with a petition for reconsideration on other issues. (4-7-11)

c. Quantification not necessary. The petition for reconsideration can confine itself to the legal issue of entitlement to costs and/or fees and need not quantify the party's claimed costs and/or fees. However, the petition can be accompanied by papers quantifying the claimed costs and/or fees. (4-7-11)

d. Legal authority. Every petition for reconsideration filed under Subsection 741.03 should cite the source of the agency's legal authority to award costs and/or fees. The agency may (but need not) deny a petition that omits a citation to legal authority to award costs and/or fees. (4-7-11)

04. Oppositions. Unless otherwise provided by statute or rule of the agency, or extended by notice or order or the agency, oppositions to requests for costs and/or fees filed under Subsections 741.02 or 741.03 of this rule or motions to extend the time to oppose requests for costs and/or fees filed under Subsections 741.02 or 741.03 of this rule must be filed and served within fourteen (14) days of the service date of the petition to be timely. The agency may exercise its discretion to consider and grant an untimely opposition for good cause shown. (4-7-11)

05. Orders Granting or Denying Costs and/or Fees. Every agency order granting or denying a request for costs and/or fees must cite the statutes or rules under which it is deciding the request for costs and/or fees. (4-7-11)

742. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).

If an order is not designated as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. (3-24-93)

751. -- 759. (RESERVED)

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

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. (3-24-93)

761. -- 769. (RESERVED)

770. CLARIFICATION OF ORDERS (RULE 770).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. (3-24-93)

771. -- 779. (RESERVED)

780. STAY OF ORDERS (RULE 780).

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. (3-24-93)

781. -- 789. (RESERVED)

Rules 790 through 799
Appeal to District Court

790. PERSONS WHO MAY APPEAL (RULE 790).

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if review of the final agency action would not provide an adequate remedy. (3-24-93)

791. NOTICE OF APPEAL (RULE 791).

The notice of appeal must be filed with the agency and with the district court and served on all parties. (3-24-93)

01. Filing. Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the District Court of the county in which: (3-24-93)

- a.** The hearing was held, (3-24-93)
- b.** The final agency action was taken, (3-24-93)
- c.** The party seeking review of the agency action resides, or operates its principal place of business in Idaho, or (7-1-97)
- d.** The real property or personal property that was the subject of the agency is located. (3-24-93)

02. Time. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: (3-24-93)

- a.** Of the service date of the final order, (3-24-93)
- b.** Of the denial of the petition for reconsideration, or (3-24-93)
- c.** The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (3-24-93)

792. -- 799. (RESERVED)

SUBCHAPTER C -- RULEMAKING

Rules 800 through 860

Rulemaking

Rules 800 through 809

Introduction

800. FORMAL AND INFORMAL RULEMAKING (RULE 800).

Formal rulemaking refers only to rulemaking procedures associated with formal notice of proposed rulemaking, receipt of and consideration of written or oral comment on the record in response to notice of proposed rulemaking, and adoption of rules. Informal rulemaking refers to informal procedures for development of, comment upon, or review of rules for later formal consideration. No rule may come into effect solely as a result of informal rulemaking. Agreements coming from informal rulemaking must be finalized by formal rulemaking. (3-24-93)

801. -- 809. (RESERVED)

Rules 810 through 819
Informal, Negotiated Rulemaking

810. LEGISLATIVE PREFERENCE FOR NEGOTIATED RULEMAKING PROCEDURES (RULE 810).

This rule addresses informal, negotiated rulemaking as described by Section 67-5220, Idaho Code. The agency, when feasible, shall proceed by informal, negotiated rulemaking in order to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rulemaking; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. (3-24-93)

811. PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN (RULE 811).

If the agency determines that informal, negotiated rulemaking is feasible, it shall publish in the Idaho Administrative Bulletin a notice of intent to promulgate a rule. If the agency determines that informal, negotiated rulemaking is not feasible, it shall explain in its notice of intent to promulgate rules why informal rulemaking is not feasible and shall proceed to formal rulemaking as provided in this chapter. Reasons why the agency may find that informal, negotiated rulemaking is not feasible include, but are not limited to, the need for temporary rulemaking, the simple nature of the proposed rule change, the lack of identifiable representatives of affected interests, or determination that affected interests are not likely to reach a consensus on a proposed rule. The determination of the agency whether to use informal, negotiated rulemaking is not reviewable. (3-24-93)

812. CONTENTS OF NOTICE OF INTENT TO PROMULGATE RULES (RULE 812).

The notice of intent to promulgate rules shall announce that the agency intends to proceed by way of informal, negotiated rulemaking to develop a proposed rule and shall include: (3-24-93)

01. Subject Matter. A brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking. (3-24-93)

02. Authority. The statutory authority for the rulemaking. (3-24-93)

03. Obtain Copy. An explanation how to obtain a preliminary draft of the proposed rules, if one is available. (3-24-93)

04. Issues. The principal issues involved and the interests which are likely to be significantly affected by the rule. (3-24-93)

05. Agency Contacts. The person(s) designated to represent the agency. (3-24-93)

06. Method of Participation. An explanation how a person may participate in the informal, negotiated rulemaking. (3-24-93)

07. Schedule. A proposed schedule for written comments or for a public meeting of interested persons, and a target date, if one exists, to complete negotiation and to publish a proposed rule for notice and comment. (3-24-93)

813. PUBLIC MEETINGS (RULE 813).

The agency may convene public meetings of interested persons to consider the matter proposed by the agency and to attempt to reach a consensus concerning a proposed rule with respect to the matter and any other matter the parties determine is relevant to the proposed rule. Person(s) representing the agency may participate in the deliberations. (3-24-93)

814. REPORTS TO THE AGENCY (RULE 814).

If the parties reach a consensus on a proposed rule, they shall transmit to the agency a report stating their consensus and, if appropriate, a draft of a proposed rule incorporating that consensus. If the parties are unable to reach a consensus on particular issues, they may transmit to the agency a report specifying those areas on which they reached consensus and those on which they did not, together with arguments for and against positions advocated by various

participants. The participants or any individual participant may also include in a report any information, recommendations, or materials considered appropriate. (3-24-93)

815. AGENCY CONSIDERATION OF REPORT (RULE 815).

The agency may accept in whole or in part or reject the consensus reached by the parties in publishing a proposed rule for notice and comment. (3-24-93)

816. -- 819. (RESERVED)

Rules 820 through 829
Petition to Initiate Rulemaking

820. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING (RULE 820).

This rule addresses petitions to initiate rulemaking as described by Section 67-5230, Idaho Code. (3-24-93)

01. Requirement. Any person petitioning for initiation of rulemaking must substantially comply with this rule. (3-24-93)

02. Form and Contents. The petition must be filed with the agency and shall: (3-24-93)

a. Identify the petitioner and state the petitioner's interest(s) in the matter; (3-24-93)

b. Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and (3-24-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

821. AGENCY RESPONSE TO PETITION (RULE 821).

01. Action of Agency. Within twenty-eight (28) days after the agency has received a petition to initiate rulemaking, the agency shall initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial, unless the rulemaking authority is in a multi-member agency board or commission whose members are not full-time officers or employees of the state, in which case the multi-member board or commission shall have until the first regularly scheduled meeting of the multi-member board or commission that takes place seven (7) or more days after submission of the petition to initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial. (7-1-97)

02. Denial. If the petition is denied, the written denial shall state: (3-24-93)

a. The agency has denied your petition to initiate rulemaking. This denial is a final agency action within the meaning of Section 67-5230, Idaho Code. (3-24-93)

b. Pursuant to Section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rulemaking by filing a petition in the District Court of the county in which: (3-24-93)

i. The hearing was held, (3-24-93)

ii. This final agency action was taken, (3-24-93)

iii. The party seeking review resides, or operates its principal place of business in Idaho, or (7-1-97)

iv. The real property or personal property that was the subject of the denial of the petition for

rulemaking is located. (3-24-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rulemaking. See Section 67-5273, Idaho Code. (3-24-93)

822. NOTICE OF INTENT TO INITIATE RULEMAKING CONSTITUTES ACTION ON PETITION (RULE 822).

The agency may initiate rulemaking proceedings in response to a petition to initiate rulemaking by issuing a notice of intent to promulgate rules in the Idaho Administrative Bulletin on the subject matter of the petition if it wishes to obtain further comment whether a rule should be proposed or what rule should be proposed. Issuance of a notice of intent to promulgate rules satisfies an agency's obligations to take action on the petition and is not a denial of a petition to initiate rulemaking. (3-24-93)

823. -- 829. (RESERVED)

Rules 830 through 839
Procedure on Rulemaking for Proposed and Pending Rules

830. REQUIREMENTS FOR NOTICE OF PROPOSED RULEMAKING (RULE 830).

01. Content of Notice of Proposed Rulemaking. Every notice of proposed rulemaking filed with the Coordinator for publication in the Bulletin shall include: (4-7-11)

a. A statement of the specific statutory authority authorizing the rulemaking, including a citation to the specific section of 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; (4-7-11)

b. A statement in nontechnical language of the substance of the proposed rules, including a specific description of any fee or charge being imposed or increased; (4-7-11)

c. A statement whether the agency intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation. If the agency intends to take oral testimony on the proposed rule, the location, date and time of any public hearing must be included; (4-7-11)

d. A specific description, if applicable, of any negative fiscal effect on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year in which the pending rule will become effective; (4-7-11)

e. The mailing address to which written comments and requests for public hearings concerning the proposed rules must be mailed. If the agency accepts comments and requests by facsimile transmission (FAX) or by e-mail, the FAX number or e-mail address, or both, at which comments may be delivered must be provided; (4-7-11)

f. The name and telephone number of an agency contact to whom technical questions about the proposed rules may be referred; (4-7-11)

g. The deadline date for the submission of written comment on the proposed rules and for submitting requests for an opportunity for an oral presentation concerning the proposed rules; (4-7-11)

h. A statement whether negotiated rulemaking has been conducted, and if not, why not; and (4-7-11)

i. The text of the proposed rules in legislative format. (4-7-11)

02. Filing a Proposed Rulemaking for Publication in the Bulletin. (4-7-11)

a. In all cases. The agency must file the information required in Subsection 830.01 of this rule with the Coordinator for publication in the Bulletin. The Coordinator is responsible for transmitting all required

rulemaking documents to the Director of Legislative Services for analysis. (4-7-11)

b. When fees are imposed or increased. In addition, if a fee or charge is imposed or increased through the proposed rulemaking, the agency must prepare and file with the Coordinator a statement of economic impact. This cost/benefit analysis must reasonably estimate the agency's costs to implement the rule and reasonably estimate the costs that would be borne by citizens, the private sector, or both, if the fees or charges being proposed are imposed by the rule. The cost/benefit analysis is not part of the proposed rulemaking notice and is not published in the Bulletin; it is a separate document that is submitted as part of the proposed rulemaking filing. (4-7-11)

03. Incorporation by Reference. If an agency proposes to incorporate by reference into its rules any codes, standards or rules authorized by subsection 67-5229(1), Idaho Code, for incorporation by reference, the agency's notice of proposed rulemaking must also include the following information required by subsection 67-5229(2), Idaho Code: (4-7-11)

a. Required information. A brief synopsis explaining why the incorporation is needed. (4-7-11)

b. Electronic link or other access. A statement that notes where an electronic copy can be obtained or that provides an electronic link to the incorporated materials. If an electronic link is provided, at a minimum the link must be posted on the agency's website or included in the rule that is published in the Administrative Code on the Coordinator's website. If the incorporated material is copyrighted or otherwise unavailable, the rule must note where a copy of the incorporated materials may be viewed or purchased. (4-7-11)

c. Identification of version or edition incorporated. The agency must provide all of the information required by Subsection 67-5229(2), Idaho Code, regarding identifying with specificity the version or edition of the code, standard or rule that is incorporated by reference, including, but not limited to, the date the document was published, approved or adopted, or became effective. (4-7-11)

d. Example incorporations. The following are examples of the kind of specificity required by this Section and by Subsection 67-5229(2), Idaho Code: (4-7-11)

i. 2009 Edition of the International Building Code, published by the International Code Council, available online at <http://www.constructionbook.com/2009-international-building-code/>; (4-7-11)

ii. 2009 International Fire Code, published by International Code Council. Copies of the 2009 edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal. Copies of the 2009 International Fire Code are available for purchase from the International Code Council, Northwest Resource Center, PO Box 8004, Bellevue, WA 98004. (4-7-11)

iii. Code of Federal Regulations, Title 40, Part 35 Environmental Protection Agency's Regulations for State and Local Assistance under the Clean Water Act, Subpart A (July 1, 2009), available online at <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=35&SUBPART=A&TYPE=PDF&YEAR=2009>; and (4-7-11)

iv. Federal Regulations adopted by the Drug Enforcement Agency, Department of Justice, published in the Federal Register; Amendments to Code of Federal Regulations, 21 CFR Part 1300, section 1300.01, Definitions of Schedule III Controlled Substances, 74 Federal Register No. 232, page 63609 (December 4, 2009), available online at http://www.nigc.gov/LinkClick.aspx?fileticket=_YB0eC63Jh4%3D&tabid=57&mid=345. (4-7-11)

831. INFORMAL PHASES OF FORMAL RULEMAKING (RULE 831).

In addition to the formal phases of rulemaking proceedings, the agency may schedule meetings after the formal proposal of rules to explain the operation of the rules proposed. (3-24-93)

832. COMMENTS ON PROPOSED RULES (RULE 832).

Deadlines for comment upon proposed rules or amendments to proposed rules will be set forth in the Idaho Administrative Bulletin. Comments should be made to the officers listed in the notices of proposed rulemaking published in the Idaho Administrative Bulletin. Further information concerning individual rulemaking should be directed to the contact person listed for that rulemaking in the Idaho Administrative Bulletin. (3-24-93)

833. PETITIONS FOR ORAL PRESENTATION (RULE 833).

01. Requirement. Any person petitioning for an opportunity for an oral presentation in a substantive rulemaking must substantially comply with this rule. (3-24-93)

02. Content. The petition shall: (3-24-93)

a. Identify the petitioner and state the petitioner's interests in the matter, (3-24-93)

b. Describe the nature of the opposition to or support of the rule or amendment to the rule proposed to be promulgated by the agency, and (3-24-93)

c. Indicate alternative proposals of the petitioner and any statute, order, rule or other controlling law or factual allegations upon which the petitioner relies to support the request for the opportunity to provide an oral presentation. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

03. Oral Presentation. Within fourteen (14) days after receiving a petition for an oral presentation, the agency shall schedule the oral presentation or deny it. The agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or another agency, but no oral presentation need be provided when the agency has no discretion as the substantive content of a proposed rule because the proposed rule is intended solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule. If oral presentation is granted, notice of the oral presentation shall be published in the Idaho Administrative Bulletin. If oral presentation is denied, the denial shall state the grounds for denial. (3-24-93)

834. THE RULEMAKING RECORD (RULE 834).

The agency shall maintain a record of each rulemaking proceeding. (3-24-93)

01. Contents. The record for a rulemaking proceeding shall include: (3-24-93)

a. Copies of all publications in the Idaho Administrative Bulletin relating to that rulemaking proceeding; (3-24-93)

b. All written petitions, submissions, and comments received by the agency, and the agency's responses to those petitions, submissions and comments; (3-24-93)

c. All written materials considered by the agency in connection with formulating the proposal or adoption of the rule; (3-24-93)

d. A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and (3-24-93)

e. Any other materials or documents prepared in conjunction with the rulemaking, including any summaries prepared for the agency in considering the rulemaking. (3-24-93)

02. Recording or Reporting. All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at their own expense. (7-1-97)

835. ADOPTION AND PUBLICATION OF PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION (RULE 835).

01. Adoption. After the expiration of the written comment period for rulemaking and following any oral presentation on the rulemaking, but no sooner than seven (7) days after the expiration of the comment period, the

agency shall consider fully all issues presented by the written and oral submissions respecting the proposed rule before adopting a pending rule. (7-1-97)

02. Publication. Upon the agency's adoption of a pending rule, the agency shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the agency need not publish the full 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 must note all changes that have been made. In addition, the agency must publish in the bulletin a concise explanatory statement containing: (7-1-97)

- a.** The reasons for adopting the pending rule; (7-1-97)
- 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; (7-1-97)
- c.** The date on which the pending rule will become final and effective pursuant to Section 67-5224(5), Idaho Code; (7-1-97)
- d.** A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature; (7-1-97)
- e.** An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and (7-1-97)
- f.** A statement how to obtain a copy of the agency's written review of and written responses to the written and oral submissions respecting the proposed rule. (7-1-97)

03. Rule Imposing or Increasing Fees. When any pending rule imposes a new fee or charge or increases an existing fee or charge, the agency shall provide the coordinator with a description of that portion of the rule 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. (7-1-97)

836. FINAL RULES (RULE 836).

Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in Section 67-5224, Idaho Code. (7-1-97)

837. -- 839. (RESERVED)

840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES (RULE 840).

01. Gubernatorial Finding. The agency may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge. (7-1-97)

02. Effective Date. Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective. (7-1-97)

03. Expiration. In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified 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 that has become effective pursuant to Section 67-5224(5), Idaho Code. (7-1-97)

04. Notice and Publication. Agencies shall give such notice as is practicable in connection with

adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (7-1-97)

05. Associated Proposed Rule. Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, an agency must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final. (7-1-97)

841. -- 849. (RESERVED)

850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES (RULE 850).

The agency may amend pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will be incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. (7-1-97)

851. -- 859. (RESERVED)

860. PERSONS WHO MAY SEEK JUDICIAL REVIEW (RULE 860).

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an agency rule (either temporary or final) may seek judicial review in district court. (3-24-93)

01. Filing. The petition for judicial review must be filed with the agency and with the district court and served on all parties. Pursuant to Section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: (3-24-93)

- a.** The hearing was held; (3-24-93)
- b.** The final agency action was taken; (3-24-93)
- c.** The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (7-1-97)
- d.** The real property or personal property that was the subject of the agency is located. (3-24-93)

02. Time. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (3-24-93)

861. -- 999. (RESERVED)

**IDAPA 04
TITLE 12
CHAPTER 01**

**04.12.01 – RULES OF ADMINISTRATIVE PROCEDURE FOR CONSIDERATION OF
COOPERATIVE AGREEMENTS FILED BY HEALTH CARE PROVIDERS**

**Subchapter A -- Rules 0 through 99
General Provisions**

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Chapter 49, Title 39, Idaho Code. (1-1-95)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is “Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed by Health Care Providers.” (1-1-95)

02. Scope. This chapter has the following scope: Every application for a certificate of public advantage for a cooperative agreement by or among health care providers and any petition for review of or complaint for revocation of an existing certificate of public advantage must follow the procedures in these rules. (1-1-95)

002. WRITTEN INTERPRETATIONS -- ATTORNEY GENERAL GUIDELINES (RULE 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules and review of comments submitted in the rule-making in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General's policies concerning administration of certificates of public advantage for the approval of cooperative agreements of health care providers will be maintained for public inspection. (1-1-95)

003. ADMINISTRATIVE REVIEW (RULE 3).

Petitions for the Attorney General's discretionary administrative review of hearing officer's preliminary orders under this chapter may be taken as set forth in rule 730. (1-1-95)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General's policies concerning administration of certificates of public advantage for the approval of cooperative agreements of health care providers are public records be available for inspection. (1-1-95)

005. DEFINITIONS (RULE 5).

As used in this chapter: (1-1-95)

01. Cooperative Agreement. Cooperative agreement means a written agreement between two (2) or more health care providers for the sharing, allocation or referral of patients, or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic, therapeutic or procedures or other services customarily offered by health care providers. (1-1-95)

02. Certificate of Public Advantage. Certificate of public advantage means a document issued by the Attorney General to parties to a cooperative agreement, verifying that the Attorney General declares that the purposes and objectives of the cooperative agreement meet the standards for such agreements set forth by statute. (1-1-95)

03. Health Care Provider. Health care provider means any person or health care facility licensed, registered, certified, permitted or otherwise officially recognized by the state to provide health care services in Idaho; or in the case of a freestanding outpatient facility, one for which a facility fee is charged for health care services performed within. (1-1-95)

- 04. Health Care Services.** Health care services include, but are not limited to, services provided by: (1-1-95)
- a.** Acute, subacute and intermediate care facilities; (1-1-95)
 - b.** Dentists, denturists, orthodontists and their assistants; (1-1-95)
 - c.** Doctors, physicians, surgeons and their assistants; (1-1-95)
 - d.** Hospitals and medical centers; (1-1-95)
 - e.** Home health services and outpatient clinics; (1-1-95)
 - f.** Laboratories and laboratory technicians; (1-1-95)
 - g.** Nurses; (1-1-95)
 - h.** Nursing homes; (1-1-95)
 - i.** Oculists, opticians, optometrists, ophthalmologists and their assistants; (1-1-95)
 - j.** Podiatrists and their assistants; (1-1-95)
 - k.** Psychiatrists, psychologists, and psychotherapists and their assistants; (1-1-95)
 - l.** Pharmacies and pharmacists; and (1-1-95)
 - m.** Rehabilitation services (including chiropractic, physical and occupational therapies). (1-1-95)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 04.12.01.000 et seq. For example, this section's citation is IDAPA 04.12.01.006. In documents submitted to the Attorney General or issued by the Attorney General, these rules may be cited as HCCA (Health Care/Cooperative Agreement rule) and rule number less leading zeroes. For example, this rule may be cited as HCCA 6 or HCCA Rule 6. (1-1-95)

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 7).

The Attorney General's mailing address is Attorney General, Room 210, Statehouse, Boise, Idaho 83720-0010. The Attorney General's street address is 700 West Jefferson, Room 210 of the Idaho Statehouse. The Attorney General's telephone number is (208) 334-2400, and the Attorney General's FAX is (208) 334-2530. The Attorney General's office hours for accepting filings under this chapter are from 8:00 a.m. through 5:00 p.m., Monday through Friday, except state holidays. (1-1-95)

008. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 8).

Except as otherwise provided by this rule, notification of intent to file an initial application under this chapter or initial applications themselves must be filed with the receptionist in the Attorney General's office in Room 210 of the Statehouse. However, once a hearing officer has been appointed by the Attorney General to hear a contested case proceeding in an application under this chapter, the hearing officer may provide by notice or order for filings to be made at a different address. (1-1-95)

009. EFFECTIVE DATE (RULE 9).

Unless otherwise indicated, the effective date of every rule in this chapter is July 1, 1994. (1-1-95)

010. ATTORNEY GENERAL'S RULES OF ADMINISTRATIVE PROCEDURE SUPERSEDED FOR CONTESTED CASES (RULE 10).

Except as otherwise provided, these rules supersede the Attorney General's Rules of Administrative Procedure for contested cases, IDAPA 04.11.01.100 through 04.11.01.799, for the administration of Chapter 49, Title 39, Idaho Code, because the Attorney General finds that consideration of cooperative agreements of health care providers under

Chapter 49, Title 39, Idaho Code, requires specialized rules of procedure with requirements in addition to those found in the Attorney General Rules of Administrative Procedure. These rules adopt the Attorney General's Rules of Administrative Procedure IDAPA 04.11.01.800 through 04.11.01.860 for rulemaking under Chapter 49, Title 39, Idaho Code. (1-1-95)

011. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure before the Attorney General in contested cases on applications for the issuance of a certificate of public advantage for a cooperative agreement among or between health care providers and on petitions for review of or for complaints in revocation of an existing certificate of public advantage. (1-1-95)

051. (RESERVED)

052. ADOPTION BY REFERENCE OF RULES ADDRESSING CONSTRUCTION OF THESE RULES, COMMUNICATIONS TO THE OFFICE, SERVICE BY THE OFFICE AND COMPUTATION OF TIME (RULE 52).

Rules 552 through 566 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.552 through 04.11.01.556, addressing construction of these rules, communications to the office, service by the office, and computation of time, are hereby adopted by reference. (1-1-95)

053. -- 099. (RESERVED)

Subchapter B -- Rules 100 through 999 -- Contested Cases

Part 1 -- Rules 100 through 399 -- Definitions and General Provisions

a. Rules 100 through 149 -- Informal and Formal Proceedings

100. ADOPTION BY REFERENCE OF RULES ADDRESSING INFORMAL PROCEEDINGS (RULE 100).

Rules 100 and 102 through 104 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.100 and 04.11.01.102 through 04.11.01.104, addressing informal proceedings, are hereby adopted by reference. (1-1-95)

101. INFORMAL PROCEDURE (RULE 101).

Statute authorizes and these rules encourage the use of informal proceedings to expedite or simplify formal contested cases. Informal procedure may include individual contacts by or with the Attorney General's investigative/prosecutorial staff asking for information, advice or assistance from the investigative/prosecutorial staff, or proposing a resolution of the application to the investigative/prosecutorial staff. Informal procedures may be conducted in writing, by telephone or television, or in person. All informal proceedings involving the Attorney General's investigative/prosecutorial staff shall be open to the public. (1-1-95)

102. -- 109. (RESERVED)

110. NOTICE OF INTENT TO FILE APPLICATION (RULE 110).

The Attorney General encourages all applicants for a certificate of public advantage to initiate an informal proceeding before the beginning of a formal proceeding by filing a notice of intent to file application four (4) to eight (8) weeks before the formal filing of an application for a certificate of public advantage. The notice of intent to file application is a public document that will be the subject of press releases or other attempts to inform the public of the proposed application. The notice of intent must list the parties that will file an application for a certificate of public advantage and generally describe the nature of the cooperative agreement that will be the subject of the application to follow. (1-1-95)

111. PROCEDURE UPON RECEIPT OF NOTICE OF INTENT TO FILE APPLICATION (RULE 111).

Within one (1) week of the receipt of a notice of intent to file application, the Office of the Attorney General will appoint a hearing officer for the formal proceeding to follow and will assign staff to an investigative role for informal

discussion with the prospective applicants concerning the application and the investigative/prosecutorial staff's position on the application. The purposes of these discussions between investigative/prosecutorial staff and the potential applicant, which will be open to interested members of the public, will be to gain understanding of the application to follow, to simplify or clarify issues that will be the subject of the application to follow, and to generally improve the presentations of all parties in the contested case hearing that will follow. Neither the prosecutorial investigative staff nor the applicant shall have any ex parte conduct with the hearing officer on any matter of substance concerning the pending application. (1-1-95)

112. -- 149. (RESERVED)

b. Rules 150 through 199 - Parties -- Other Persons

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).

Parties to contested cases under Title 39, Chapter 49, are called applicants, petitioners, complainants, respondents, or intervenors. On reconsideration or discretionary review by the Attorney General parties are called by their original titles listed in the previous sentence. (1-1-95)

151. APPLICANTS (RULE 151).

Persons who seek a certificate of public advantage from the Attorney General are called "applicants." (1-1-95)

152. PETITIONERS (RULE 152).

Persons not applicants who seek to modify, amend or stay existing certificates of public advantage, to clarify their rights or obligations under existing certificates of public advantage, or to otherwise take action that will result in the issuance of an order or rule, are called "petitioners." (1-1-95)

153. COMPLAINANTS (RULE 153).

Persons who charge other person(s) with any act or omission with regard to certificates of public advantage are called "complainants." In any proceeding in which the Attorney General's investigative/prosecutorial staff itself charges a person with an act or omission or seeks revocation of a certification, the Attorney General's investigative/prosecutorial staff is called "complainant." (1-1-95)

154. RESPONDENTS (RULE 154).

Persons against whom complaints are filed or about whom investigations are initiated are called "respondents." (1-1-95)

155. INTERVENORS (RULE 156).

Persons, not applicants, complainants, or respondents to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354, are called "intervenors." (1-1-95)

156. INVESTIGATIVE/PROSECUTORIAL STAFF (RULE 156).

The Attorney General may designate an investigative/prosecutorial staff that may appear, without intervention, in all proceedings under these rules. The investigative/prosecutorial staff has all rights to participate as a party in proceedings under these rules. (1-1-95)

157. RIGHTS OF PARTIES AND OF ATTORNEY GENERAL INVESTIGATIVE/PROSECUTORIAL STAFF (RULE 157).

Subject to Rules 558, 560, and 600, all parties and the Attorney General's investigative/prosecutorial staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (1-1-95)

158. PERSONS DEFINED -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).

The term "person" includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in an administrative proceeding. Persons other than the persons named in Rules 151 through 155 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. Persons may request the Attorney General in writing that they be notified when proceedings of a given kind are initiated. These persons are called "Interested Persons."

Interested persons may become intervenors or public witnesses. The Attorney General will serve notice of such proceedings on all interested persons. (1-1-95)

159. -- 199. (RESERVED)

c. Rules 200 through 209 - Representatives of Parties

200. ADOPTION BY REFERENCE OF RULES ADDRESSING REPRESENTATIVES OF PARTIES (RULE 200).

Rules 200 through 207 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.200 through 04.11.01.207, addressing representation of parties, are hereby adopted by reference. (1-1-95)

201. -- 209. (RESERVED)

d. Rules 210 through 299 - Pleadings -- In General

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases are called applications, petitions, complaints, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party’s initial pleading in any proceeding must comply with Rule 200. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 301. A party may adopt or join any other party’s pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (1-1-95)

211. -- 219. (RESERVED)

220. APPLICATIONS -- DEFINED -- FORM AND CONTENTS (RULE 220).

01. Applications Defined. All pleadings requesting a certificate of public advantage are called “applications.” (1-1-95)

02. Form and Contents. Applications for a certificate of public advantage must contain the information required in Subsections 220.03 through 220.08. (1-1-95)

03. Listing of Parties. The application must list by name, business address, and business telephone all health care providers party to the cooperative agreement. (1-1-95)

a. If the health care provider is a corporation, the application must list the corporation’s principal executive officer or such other officer as the corporation may designate as contact for the corporation, the primary business address of the corporation, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the corporation, and the primary Idaho business telephone if the primary business telephone is not in Idaho. (1-1-95)

b. If the health care provider is a partnership, the application must list the partnership name and each partner’s name, the primary business address of the partnership, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the partnership, and the primary Idaho business telephone if the primary business telephone is not in Idaho. (1-1-95)

c. If the health care provider is an individual or an association of individuals, the application must list the association’s name (if there is one) and each individual’s name, the primary business address of the association and each individual, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the association and each individual, and the primary Idaho business telephone if the primary business telephone is not in Idaho or give a specific description of the individuals involved, e.g., all doctors in () County referring patients to () Hospital under the terms of the agreement attached as exhibit 1 to the application. (1-1-95)

04. Description of Agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. (1-1-95)

05. Listing of Benefits. The application shall state whether one (1) or more of the following benefits will result from the issuance of a certificate of public advantage for the cooperative agreement and shall list any other additional benefits that the applicants wish to be taken into account in the consideration of the application. (1-1-95)

- a.** The quality of health care provided to consumers will be enhanced; (1-1-95)
- b.** A hospital, if any, and other health care facilities that customarily serve the communities in the area likely to be affected by the cooperative agreement will be preserved; (1-1-95)
- c.** Services provided by the parties to cooperative agreement will gain cost efficiency; (1-1-95)
- d.** The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve; or (1-1-95)
- e.** Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided. (1-1-95)

06. Supporting Analyses. The application shall be accompanied by the prepared testimony of witnesses to be called at hearing by the applicants and additional reports, studies, etc., that the witnesses would introduce at hearing as exhibits supporting the application. The prepared testimony and exhibits shall address each of the potential benefits listed in Subsection 220.05 that are claimed by the applicants and any additional benefits that the applicants wish to be taken into consideration. (1-1-95)

07. Statement Concerning Discovery. The application shall state whether the applicant consents to discovery under these rules. (1-1-95)

08. Statement Concerning Fund for Expert Witnesses. The application shall state whether the applicant consents to provide a fund for the investigative/prosecutorial staff of the Office of the Attorney General to hire experts to evaluate the application. If the applicant so consents, it shall specify the amount of the fund available or that the applicant would propose to negotiate the amount with the investigative/prosecutorial staff of the Office of the Attorney General. (1-1-95)

09. Defective or Insufficient Applications. If an application does not contain all of the information required by this rule, it is defective or insufficient. (1-1-95)

221. -- 229. (RESERVED)

230. ADOPTION BY REFERENCE OF RULES ADDRESSING PETITIONS, COMPLAINTS, MOTIONS, ANSWERS AND CONSENT AGREEMENTS (RULE 230).

Rules 230, 240, 260, 270 AND 280 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.230, 04.11.01.240, 04.11.01.260, 04.11.01.270, and 04.11.01.280, addressing petitions, complaints, motions, answers, and consent agreements are hereby adopted by reference. (1-1-95)

231. -- 299. (RESERVED)

e. Rules 300 through 349 -- Filing, Service, Amendment and Withdrawal of Documents

300. FILING DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) (RULE 300).

An original and two (2) copies of all documents intended to be part of the record of a contested case must be filed with the Office of the Attorney General or such other person as designated by the hearing officer. The original shall

be for the hearing officer and the two copies for the Attorney General’s investigative/prosecutorial staff. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX). Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (1-1-95)

301. ADOPTION BY REFERENCE OF RULES ADDRESSING SERVICE OF PLEADINGS AND OTHER RULES ON PLEADINGS (RULE 301).

Rules 301 through 305 of the Attorney General’s Idaho Rules of Administrative Procedure, IDAPA 04.11.01.301 through 04.11.01.305, addressing pleadings, hereby adopted by reference. (1-1-95)

302. -- 349. (RESERVED)

f. Rules 350 through 399 - Intervention -- Public Witnesses

350. ADOPTION BY REFERENCE OF RULES ADDRESSING INTERVENTION AND PUBLIC WITNESSES (RULE 350).

Rules 350 through 355 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.350 through 04.11.01.355, addressing intervention and public witnesses, are hereby adopted by reference. (1-1-95)

351. -- 399. (RESERVED)

**Part 2. Rules 400 through 499 -- Declaratory Rulings and Orders -- Hearing Officers --
Presiding Officers -- Dual Investigatory and Adjudicatory Functions**

a. Rules 400 through 409 -- Declaratory Rulings

400. ADOPTION BY REFERENCE OF RULES ADDRESSING DECLARATORY RULINGS (RULE 400).

Rules 400 through 402 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.400 through 04.11.01.402, addressing declaratory orders, are hereby adopted by reference. (1-1-95)

401. -- 409. (RESERVED)

b. Rules 410 through 419 -- Hearing Officers -- Presiding Officers

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).

A hearing officer is a person other than the Attorney General appointed to hear contested cases on behalf of the Attorney General. Hearing officers may be deputy attorneys general, other employees of the Attorney General or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues of health care providers’ cooperative agreements. The appointment of a hearing officer is a public record available for inspection, examination and copying. (1-1-95)

411. HEARING OFFICERS CONTRASTED WITH ATTORNEY GENERAL (RULE 411).

The Attorney General is not a hearing officer, even if the Attorney General presides at a contested case. The term “hearing officer” as used in these rules refers only to presiding officers other than the Attorney General. (1-1-95)

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).

Pursuant to Section 67-5252, Idaho Code, there are two (2) rules for disqualification of hearing officers. (1-1-95)

01. Disqualification in Applications for Certificate. Section 39-4303(3) requires applications for a certificate of public advantage to be heard within sixty (60) days. Accordingly, under Section 67-5252, Idaho Code, no party to the contested case can disqualify a hearing officer except for cause. (1-1-95)

02. Disqualification in Other Contested Cases. In other contested cases, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a hearing officer. Any party shall have a right to move to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the Attorney General, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. (1-1-95)

03. Motion for Disqualification. Any party may, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or promptly upon discovering facts establishing grounds for disqualification, whichever is later. A hearing officer whose disqualification is requested shall determine in writing whether to grant the motion for disqualification, stating facts and reasons for the hearing officer's determination. Disqualification of the Attorney General is not allowed. See Sections 59-704 and 67-5252(4), Idaho Code. (1-1-95)

413. ADOPTION BY REFERENCE OF RULES ADDRESSING HEARING OFFICERS AND PRESIDING OFFICERS (RULE 413).

Rules 413 through 417 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.413 through 04.11.01.417.17, addressing hearing officers and presiding officers, are hereby adopted by reference. (1-1-95)

414.-- 419. (RESERVED)

**c. Rules 420 through 429 -- Responsibility for Investigative/Prosecutorial and Adjudicatory
Functions upon Consideration of Contested Cases**

**420. CONTRAST BETWEEN OFFICE OF ATTORNEY GENERAL'S INVESTIGATIVE/
PROSECUTORIAL AND ADJUDICATORY FUNCTIONS (RULE 420).**

Rules 420 through 429 set forth procedures to be followed by the Office of the Attorney General in processing applications for a certificate of public advantage and in conducting proceedings to revoke certificates of public advantage. (1-1-95)

01. Investigative/Prosecutorial Function. The investigative/prosecutorial function is performed by deputy attorneys general and other personnel or consultants assigned to review applications for a certificate of public advantage or to prosecute proposed revocations of certificates of public advantage. The investigative/prosecutorial function includes gathering of evidence concerning an application or potential revocation outside of formal contested case proceedings, presentation of allegations or evidence for determination whether a complaint to revoke a certificate will be issued, and presentation of evidence in a formal contested case proceeding. (1-1-95)

02. Adjudicatory Function. The adjudicatory function is performed by a hearing officer appointed by the Attorney General or by the Attorney General upon review of the hearing officer's preliminary order. The adjudicatory function includes deciding whether to issue a complaint for revocation of a certificate upon the basis of allegations before the Office of the Attorney General, deciding whether to accept a consent order or other settlement of a complaint, and deciding the merits of an application or a complaint following presentation of evidence in formal contested case proceedings. A deputy attorney general may be assigned to be a hearing officer. (1-1-95)

421. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR COMPLAINT (RULE 421).

This rule sets forth procedures to be followed by the Office of the Attorney General upon receipt of an inquiry whether or how an application for a certificate should be made or whether a complaint to revoke a certificate should be issued. (1-1-95)

01. The Attorney General. When the public contacts the Attorney General, the Attorney General may: explain the office's procedures; explain the office's jurisdiction or authority (including the statutes or rules administered by the Attorney General); and direct the public to appropriate staff personnel who can provide assistance or who can advise them how to pursue a formal proceeding before the Attorney General. No statement of the Attorney General in response to a public inquiry constitutes a finding of fact, conclusion of law or other decision on the underlying matter. (1-1-95)

02. Deputy Attorneys General. When the public contacts a deputy attorney general (other than a deputy attorney general assigned to be a hearing officer) to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, the deputy attorney general may: explain the procedures to be followed; explain the Attorney General's jurisdiction or authority (including an explanation of the statutes or rules administered by the Attorney General); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a formal proceeding before the Attorney General. A deputy attorney general assigned to an investigative/prosecutorial role may discuss whether given allegations would, in the deputy's opinion, warrant the issuance of a certificate or a complaint to revoke a certificate or warrant direction to staff to pursue further investigation. Neither a hearing officer nor the Attorney General is bound by the deputy's advice or recommendations, and the deputy should notify the public that neither a hearing officer nor the Attorney General is obligated to follow the deputy's advice or recommendations. (1-1-95)

03. Other Staff. When the public contacts other staff in the Office of the Attorney General to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, a staff member authorized to respond may: explain the Attorney General's procedures; explain the Attorney General's jurisdiction or authority (including an explanation of the statutes or rules administered by the Attorney General); direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the Attorney General; and express an opinion whether given allegations would, in the staff's opinion, warrant the issuance of a complaint or warrant staff's further investigation. Neither the hearing officer nor the Attorney General is bound by the staff's advice or recommendations, and the staff should notify the public that neither the hearing officer nor the Attorney General is obligated to follow the staff's advice or recommendations. (1-1-95)

04. Hearing Officers. When the public contacts a hearing officer to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, the hearing officer should not discuss the matter, but should refer the member of the public to other personnel. (1-1-95)

422. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS (RULE 422).
This rule sets forth procedures to be followed by the Office of the Attorney General when a consent agreement, stipulated settlement, or other settlement is negotiated before an application for a certificate of public advantage or an complaint for revocation of a certificate is filed. (1-1-95)

01. Negotiations. A deputy attorney general assigned to an investigative/prosecutorial role and other staff may negotiate consent agreements or other settlements. Neither the Attorney General nor a hearing officer may participate in these negotiations, but the Attorney General may have rules or guidelines for issuance of consent agreements or other general policy statements available to guide individual negotiations. (1-1-95)

02. Presentation of Consent Agreement. Consent agreements must be presented to the Office of the Attorney General for approval. The consent agreement may be presented to the Office of the Attorney General by representatives of any party, unless the agreement provides to the contrary. (1-1-95)

03. Consideration of Consent Agreement. A consent agreement that is presented to the Office of the Attorney General must be reviewed under this rule. A hearing officer will be assigned to review the consent agreement. The hearing officer may accept or reject the consent agreement, indicate how the consent agreement must be modified to be acceptable, or inform the parties what further information is required for consideration of the consent agreement. When a consent agreement is rejected, no matter recited in the rejected consent agreement may be used as an admission against a party in any later proceeding before the Attorney General, and any such matter must be proven by evidence independent of the consent agreement. Any acceptance or rejection of the consent agreement shall be done by preliminary order, which may be reviewed by the Attorney General as any other preliminary order. (1-1-95)

423. PROCEDURES AFTER INITIATION OF FORMAL CASE (RULE 423).
This rule sets forth procedures to be followed by the Office of the Attorney General after a formal case is initiated, while investigation or discovery is underway, while a hearing is conducted, and before the preliminary order of the hearing officer is reviewed by the Attorney General (if a hearing officer's preliminary order is reviewed). (1-1-95)

01. The Attorney General. (1-1-95)

a. Prohibited Contacts--Allowable Managerial Reporting. The Attorney General shall not discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or other staff involved in the investigation or prosecution of the case. The Attorney General may request periodic progress reporting on staff preparation. For example, the Attorney General may ask whether the staff will be prepared to present its case by a given date, but cannot inquire about the substance of the staff's case. (1-1-95)

b. Allowed Discussions. The Attorney General may discuss the substance of the contested case with deputy attorneys general and staff who are not involved in the investigation or prosecution of the contested case. The Attorney General may discuss the substance of the contested case with the hearing officer assigned to the case. (1-1-95)

02. Deputy Attorneys General. (1-1-95)

a. Investigative/Prosecutorial Attorneys. No deputy attorney general involved in the investigation or prosecution of a contested case shall discuss the substance of the contested case ex parte with the Attorney General, a hearing officer assigned to hear the contested case, or with any deputy attorney general assigned to advise or assist the Attorney General or hearing officer assigned to hear the contested case. (1-1-95)

b. Advisory Attorneys. No deputy attorney general assigned to advise or assist the Attorney General or hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. A deputy attorney general assigned to advise or assist the Attorney General or hearing officer may discuss the substance of the contested case with the hearing officer or Attorney General. (1-1-95)

03. Other Staff. (1-1-95)

a. Investigative/Prosecutorial Staff. No staff involved in the investigation or prosecution of the contested case shall discuss the substance of the contested case ex parte with the Attorney General, a hearing officer assigned to hear the contested case, or with any deputy attorney general assigned to advise or assist the Attorney General or hearing officer assigned to hear the contested case. (1-1-95)

b. Advisory Staff. No staff assigned to advise or assist the Attorney General or hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. Staff assigned to advise or assist the Attorney General or hearing officer may discuss the substance of the contested case with the hearing officer or Attorney General. (1-1-95)

04. Hearing Officers. No hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. Hearing officers may discuss the substance of the contested case with deputy attorneys general assigned to advise or assist the hearing officer. Hearing officers may discuss the substance of the contested case with the Attorney General. (1-1-95)

424. HEARING OFFICERS (RULE 424).

No hearing officer may discuss the substance of a contested case ex parte with any deputy attorney general or staff involved in the investigation or prosecution of the contested case at any stage of the consideration of the contested case or pending judicial review of the decision in the contested case. A hearing officer may consult with any other hearing officer and with the Attorney General. A hearing officer may consult with a deputy attorney general assigned to advise or assist the hearing officer. The Attorney General may appoint as a hearing officer a deputy attorney general who will advise or assist the Attorney General in consideration of the contested case. (1-1-95)

425. ATTORNEY GENERAL'S CONSIDERATION OF PRELIMINARY ORDER (RULE 425).

This rule sets forth procedures to be followed by the Attorney General, deputy attorneys general, staff, and hearing officers if the Attorney General has accepted the hearing officer's preliminary order for discretionary review. (1-1-95)

01. The Attorney General. In considering the hearing officer's preliminary order, the Attorney General may consult with deputy attorneys general assigned to advise or assist the Attorney General and with staff that did not participate in the investigation or prosecution of the contested case. The Attorney General may consult with the hearing officer that heard the contested case and prepared the preliminary order or other hearing officers. (1-1-95)

02. Deputy Attorneys General. (1-1-95)

a. Investigative/Prosecutorial Attorneys. No deputy attorney general involved in the investigation or prosecution of a contested case shall consult with the Attorney General considering the hearing officer's preliminary order. (1-1-95)

b. Advisory Attorneys. A deputy attorney general assigned to advise or assist the Attorney General in consideration of the contested case may consult with the Attorney General in preparation for or while the Attorney General is considering the hearing officer's preliminary order. (1-1-95)

03. Other Staff. (1-1-95)

a. Investigative/Prosecutorial Staff. No staff involved in the investigation or prosecution of the contested case shall consult with the Attorney General in the Attorney's General consideration of the preliminary order. (1-1-95)

b. Advisory Staff. Any staff assigned to advise or assist the Attorney General may consult with the Attorney General at the Attorney General's direction. (1-1-95)

04. Hearing Officers. No hearing officer shall consult with any person other than the Attorney General or another deputy assigned to advise the Attorney General during the Attorney General's consideration of the hearing officer's preliminary order. (1-1-95)

426. -- 499. (RESERVED)

Part 3. Rules 500 through 699 -- Post-Pleading Procedure

a. Rules 500 through 509 -- Alternative Dispute Resolution (ADR)

500. ADOPTION BY REFERENCE OF RULES ADDRESSING ALTERNATIVE DISPUTE RESOLUTION (ADR) (RULE 500).

Rules 500 through 502 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.500 through 04.11.01.502, addressing alternative dispute resolution (ADR), are hereby adopted by reference. (1-1-95)

501. -- 509. (RESERVED)

b. Rules 510 through 519 -- Prehearing Conferences

510. ADOPTION OF REFERENCE OF RULES ADDRESSING PREHEARING CONFERENCES (RULE 510).

Rules 510 through 514 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.510 through 04.11.01.514, addressing prehearing conferences, are hereby adopted by reference. (1-1-95)

511. -- 519. (RESERVED)

c. Rules 520 through 539 -- Discovery -- Related Prehearing Procedures

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized by these rules in contested cases are: (1-1-95)

a. Depositions; (1-1-95)

b. Production requests or written interrogatories; and (1-1-95)

c. Requests for admission. (1-1-95)

02. Scope of Discovery. Unless otherwise provided by statute, rule, order or notice, the scope of discovery is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (1-1-95)

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

Parties may agree between or among themselves to provide for discovery. If the applicant for a certificate of public advantage consents to being subject to discovery, the hearing officer may issue an order scheduling discovery based upon that consent. Any party that propounds discovery to the applicant has by operation of this rule also consented to discovery of its case according to the terms of the hearing officer's order compelling discovery or subsequent orders addressing discovery. (1-1-95)

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).

All parties have a right of discovery of all other parties according to Rule 521. (1-1-95)

523. DEPOSITIONS (RULE 523).

Whenever the parties involved have agreed to or have consented to discovery according to these rules, depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, rule or order. (1-1-95)

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).

Whenever the parties involved have agreed to or consented to discovery according to these rules, production requests or written interrogatories and requests for admission may be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, rule or order. (1-1-95)

525. ANSWERS TO DISCOVERY IN PUBLIC FILES (RULE 525).

Answers to discovery in the possession of the Office of the Attorney General are in the public domain. Answers are subject to inspection, examination and copying under the public records law, Sections 9-337 through 9-348, Idaho Code. (1-1-95)

526. (RESERVED)

527. ADOPTION BY REFERENCE OF RULES RELATING TO ANSWERS TO PRODUCTION REQUESTS, FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS, EXHIBIT NUMBERS, AND PREPARED TESTIMONY AND EXHIBITS (RULE 527).

Rules 527 through 530 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.527 through 04.11.01.530, addressing answers to production requests, filing and service of discovery-related documents, exhibit numbers, and prepared testimony and exhibits, are hereby adopted by reference. (1-1-95)

528. -- 530. (RESERVED)

531. SANCTIONS FOR FAILURE TO OBEY ORDER SCHEDULING DISCOVERY (RULE 531).

The hearing officer may impose all sanctions recognized by statute or rule for failure to comply with an order scheduling discovery. In particular, whether or not the applicant has consented to discovery, the hearing officer may find that the applicant has not met its burden of persuasion of the benefits of the cooperative agreement if the applicant will not comply with reasonable requests for discovery on material relevant to its application. (1-1-95)

532. -- 539. (RESERVED)

**d. Rules 540 Through 549 -- Particular Rules for Issuance
or Revocation of a Certificate of Public Advantage**

**540. TIMETABLE FOR PROCESSING APPLICATION FOR CERTIFICATE OF PUBLIC
ADVANTAGE (RULE 540).**

Section 39-4903(3), Idaho Code, provides that the Attorney General must grant or deny an application for a certificate of public advantage within sixty (60) days of the date of the filing of the application. The Attorney General interprets this timetable as establishing an applicant's right to receive a decision on the merits within sixty (60) days, not as divesting the Attorney General of jurisdiction to make a decision more than sixty (60) days after filing the application. Furthermore, the Attorney General interprets the applicant's right to a decision in sixty (60) days as a right that an applicant may waive in writing. (1-1-95)

541. APPLICANTS' BURDENS OF PROOF (RULE 541).

01. Burden of Introduction of Evidence on Benefits. Applicants for a certificate of public advantage bear the burden of introduction of evidence that their cooperative agreement provides one (1) or more of the following benefits: (1-1-95)

- a.** The quality of health care provided to consumers in the state will be enhanced. (1-1-95)
- b.** A hospital, if any, and other health care facilities that customarily serve the communities in the area likely affected by the cooperative agreement will be preserved. (1-1-95)
- c.** Services provided by the parties to the cooperative agreement will gain cost efficiency. (1-1-95)
- d.** The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve. (1-1-95)
- e.** Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided. (1-1-95)

02. Burden of Persuasion That Benefits Outweigh Disadvantages. Applicants for a certificate of public advantage bear the burden of persuasion by clear and convincing evidence that their agreement produces one (1) or more of the benefits listed in Subsection 541.01 and that these benefits outweigh any disadvantages attributable to a reduction in competition that may result from the agreement, including, but not limited to the following: (1-1-95)

- a.** The likely adverse impact, if any, on the ability of health maintenance organizations, preferred provider plans, hospital provider organizations, persons performing utilization review, or other health care payers to negotiate optimal payment and service arrangements with hospitals and other health care providers. (1-1-95)
- b.** Whether any reduction in competition among physicians, allied health professionals or other health care providers is likely to result directly or indirectly from the cooperative agreement. (1-1-95)
- c.** Whether any arrangements that are less restrictive to competition could likely achieve substantially the same benefits or a more favorable balance of benefits over disadvantages than that likely to be achieved from reducing competition. (1-1-95)

03. Relevance of Providing Supporting Information. In assessing whether the applicant has met its burden of persuasion by clear and convincing evidence that benefits of the cooperative agreement outweigh the disadvantages, the finder of fact may take into account whether the applicant supplied at hearing relevant information available to the applicant. (1-1-95)

542. APPOINTMENT OF HEARING OFFICER (RULE 542).

The demands on the time of the Attorney General will not ordinarily allow the Attorney General to hear an application. Accordingly, within seven days after the Office of the Attorney General receives either a notice of intent to file an application for a certificate of public advantage or receives an application for a certificate of public advantage, whichever comes first, the Attorney General will appoint a hearing officer to hear the case. The hearing officer will be authorized to issue a preliminary order (i.e., an order that will become final in the absence of review by the Attorney General). The hearing officer will issue a preliminary order rather than a recommended order (an order that becomes final only after review by the Attorney General) because there is not time for a hearing officer to hear a case and issue a recommended order and for the Attorney General to review a recommended order in sixty (60) days. (1-1-95)

543. ATTORNEY GENERAL'S REVIEW OF PRELIMINARY ORDER DISCRETIONARY (RULE 543).

The Attorney General's review of a preliminary order is discretionary. The Attorney General will not review a preliminary order without the applicant's written waiver of the sixty (60) day limit for deciding an application. (1-1-95)

544. ORDER GRANTING AN APPLICATION FOR A CERTIFICATE -- ISSUANCE OF CERTIFICATE (RULE 544).

01. Contents of Order. An order granting an application for a certificate of public advantage must recite the parties to the cooperative agreement, attach the cooperative agreement approved by order as an exhibit, find that the benefits of the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the cooperative agreement, and state whether periodic written updates of the progress of the approved cooperative agreement will be required. (1-1-95)

02. Frequency of Periodic Updates. If the order requires periodic written updates, the order may require periodic reports at intervals no more frequently than ninety (90) days. (1-1-95)

03. Issuance of Certificate. The Attorney General will issue a certificate of public advantage when a preliminary order of the hearing officer granting an application for a certificate becomes final, if the preliminary order is not reviewed, or concurrently with a final order of the Attorney General granting a certificate, if the Attorney General reviews a preliminary order of the hearing officer and issues a final order granting a certificate. (1-1-95)

545. EFFECT OF ISSUANCE OF CERTIFICATE (RULE 545).

If a certificate of public advantage is issued, participants in the approved cooperative agreement are immune from civil enforcement and criminal prosecution for actions that might otherwise violate antitrust law of the state of Idaho taken in furtherance of the cooperative agreement. Nothing in the approval limits the authority of the Attorney General to initiate civil enforcement or criminal prosecution if health care providers have exceeded the scope of the cooperative agreement approved. (1-1-95)

546. RECOMMENDATION FOR REVOCATION OF CERTIFICATE -- REVIEW BY ATTORNEY GENERAL (RULE 546).

01. Staff and Other Recommendations. If the investigative/prosecutorial staff of the Attorney General recommends to the Attorney General in writing that a certificate of public advantage be revoked, revoked in part or otherwise modified because the benefits resulting from or likely to result from a cooperative agreement under a certificate of public advantage no longer outweigh any disadvantage attributable to any actual or potential reduction in competition resulting from the cooperative agreement, the staff shall serve a copy of the recommendation upon the parties to the agreement and upon their counsel of record for the application, if there was one. If the Office of the Attorney General receives such a recommendation in writing from the public, the Office of the Attorney General shall serve a copy of the recommendation upon the parties to the agreement and upon their counsel of record, if there was one. (1-1-95)

02. The Attorney General's Response. The Attorney General shall consider the recommendation to revoke, revoke in part or modify the certificate of public advantage and find whether the recommendation is substantial enough to warrant the initiation of a complaint to formally investigate. The Attorney General's finding that the recommendations warrant further investigation by the initiation of a complaint does not constitute a finding

or conclusion on any underlying matter.

(1-1-95)

547. PROCEDURE WHEN COMPLAINT ISSUED (RULE 547).

If the Attorney General accepts a recommendation to initiate a formal investigation by complaint, pursuant to Section 39-4903(12), Idaho Code, the order initiating the complaint shall revoke, revoke in part or modify the certificate of public advantage and inform the parties to the cooperative agreement that they have ten (10) days to contest the revocation, revocation in part or modification of the certificate. An order of revocation, revocation in part or modification of the certificate shall not become effective until ten (10) days have elapsed and the parties to the certificate have not contested the order. If the parties contest the order of revocation, revocation in part or modification, that order shall then be ineffective.

(1-1-95)

548. PROCEDURE WHEN REVOCATION CONTESTED (RULE 548).

If a proposed revocation, revocation in part or modification of a certificate of public advantage is contested, the Attorney General shall appoint a hearing officer to hear the complaint as a contested case. The hearing officer shall issue a preliminary order deciding all issues raised by the complaint following a hearing on the merits or a settlement.

(1-1-95)

549. TERMINATION OF COOPERATIVE AGREEMENT (RULE 549).

If a party to a cooperative agreement terminates its participation in the cooperative agreement, the party shall file a notice of termination with the Office of the Attorney General within thirty (30) days after the termination takes effect. If all parties to the cooperative agreement terminate their participation in the agreement, the Attorney General shall revoke the certificate of public advantage for the agreement.

(1-1-95)

e. Rules 550 through 599 -- Hearings -- Miscellaneous Procedure

550. ADOPTION BY REFERENCE OF RULES ADDRESSING HEARINGS AND MISCELLANEOUS PROCEDURE (RULE 550).

Rules 550 through 566 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.550 through 04.11.01.566, addressing hearings and miscellaneous procedure, are hereby adopted by reference.

(1-1-95)

551. -- 599. (RESERVED)

f. Rules 600 Through 609 -- Evidence in Contested Cases

600. ADOPTION BY REFERENCE OF RULES ADDRESSING EVIDENCE (RULE 600).

Rules 600 through 606 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.600 through 04.11.01.606, addressing evidence, are hereby adopted by reference.

(1-1-95)

601. -- 609. (RESERVED)

g. Rules 610 through 649 -- Settlements

610. ADOPTION BY REFERENCE OF RULES ADDRESSING SETTLEMENTS (RULE 610).

Rules 610 through 614 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.610 through 04.11.01.614, addressing settlements, are hereby adopted by reference.

(1-1-95)

611. -- 649. (RESERVED)

h. Rules 650 through 699 -- Records for Decisions

650. ADOPTION BY REFERENCE OF RULES ADDRESSING RECORDS FOR DECISION (RULE 650).

Rules 650 and 651 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.650 through 04.11.01.651, addressing records for decision, are hereby adopted by reference. (1-1-95)

651. -- 699. (RESERVED)

Part 4. -- Rules 700 through 999 -- Preliminary Orders and Review of Preliminary Orders

a. Rules 700 through 709 -- Defaults

700. ADOPTION BY REFERENCE OF RULES ADDRESSING DEFAULTS (RULE 700).

Rules 700 through 702 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.700 through 04.11.01.702, addressing defaults, are hereby adopted by reference. (1-1-95)

701. -- 709. (RESERVED)

b. Rules 710 through 780

Interlocutory, Preliminary and Final Orders -- Review or Stay of Orders

710. ADOPTION BY REFERENCE OF RULES ADDRESSING INTERLOCUTORY, PRELIMINARY AND FINAL ORDERS AND REVIEW OR STAY OF ORDERS (RULE 710).

Rules 710, 711, 730, 740, 750, 760, 770, and 780 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.710, 04.11.01.711, 04.11.01.730, 04.11.01.740, 04.11.01.750, 04.11.01.760, 04.11.01.770 and 04.11.01.780, addressing interlocutory, preliminary and final orders and review or stay of orders, are hereby adopted by reference. (1-1-95)

711. -- 789. (RESERVED)

c. Rules 790 through 999 -- Appeal to District Court

790. ADOPTION BY REFERENCE OF RULES ADDRESSING APPEAL TO DISTRICT COURT (RULE 790).

Rules 790 and 791 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.790 and 04.11.01.791, addressing appeal to district court, are hereby adopted by reference. (1-1-95)

791. -- 999. (RESERVED)

**IDAPA 04
TITLE 20
CHAPTER 01**

**04.20.01 – RULES IMPLEMENTING THE IDAHO TOBACCO MASTER
SETTLEMENT AGREEMENT COMPLEMENTARY ACT**

**Subchapter A -- General Provisions and Definitions
(Rules 0 through 99)**

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Title 39, Chapter 84, Idaho Code. (3-20-04)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is “Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act.” (3-20-04)

02. Scope. This chapter has the following scope: (3-20-04)

a. These rules govern compliance with, and seek to implement, Idaho’s Tobacco Master Settlement Agreement Complementary Act. (3-20-04)

b. These rules pertain to the sale, stamping and reporting of cigarettes in Idaho. (3-20-04)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General’s policies concerning administration of these rules will be maintained for public inspection. (3-20-04)

003. PUBLIC RECORDS ACT COMPLIANCE (RULE 3).

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General’s policies concerning administration of these rules are public records available for inspection. (3-20-04)

004. ADMINISTRATIVE APPEALS (RULE 4).

Except as provided by CAR 200 and Section 39-8407(1), Idaho Code, there is no provision for administrative appeals. (3-20-04)

005. INCORPORATION BY REFERENCE (RULE 5).

No documents are incorporated by reference in this chapter. (3-20-04)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 04.20.01.000 et seq. For example, this section’s citation is IDAPA 04.20.01.006. In documents submitted to the Attorney General or issued by the Attorney General, these rules may be cited as CAR (Complementary Act Rules) and rule number less leading zeroes. For example, this rule may be cited as CAR 6. (3-20-04)

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 7).

01. Address. The Attorney General’s mailing address is Attorney General, Room 210, Statehouse, Boise, Idaho 83720-0010. The Attorney General’s street address is 700 West Jefferson, Room 210 of the Idaho Statehouse. (3-20-04)

02. Telephone. The Attorney General’s telephone number is (208) 334-2424. (3-20-04)

- 03. FAX.** The Attorney General’s facsimile telephone number is (208) 334-2830. (3-20-04)
- 04. Office Hours.** The Attorney General’s office hours for accepting filings under this chapter are from 8 a.m. through 5 p.m., Monday through Friday, except state holidays. (3-20-04)
- 008. DEFINITIONS (RULE 8).**
As used in this chapter: (3-20-04)
- 01. Brand Family.** Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, “menthol,” “lights,” “kings,” and “100s,” and includes any brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes. (3-20-04)
- 02. Cigarette.** Cigarette has the same meaning as that term is defined in Section 39-7802(d), Idaho Code. (3-20-04)
- 03. Directory.** Directory means the Directory of Compliant Tobacco Product Manufacturers and Brands, as provided for by Section 39-8403(2), Idaho Code. (3-20-04)
- 04. Master Settlement Agreement.** Master settlement agreement has the same meaning as that term is defined in Section 39-7802(e), Idaho Code. (3-20-04)
- 05. Nonparticipating Manufacturer.** Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer. (3-20-04)
- 06. Participating Manufacturer.** Participating manufacturer has the same meaning as that term is defined in section II(jj) of the master settlement agreement and all amendments thereto. (3-20-04)
- 07. Qualified Escrow Fund.** Qualified escrow fund has the same meaning as that term is defined in Section 39-7802(f), Idaho Code. (3-20-04)
- 08. Stamping Agent.** Stamping agent means a person that is authorized or required to affix tax stamps to packages or other containers of cigarettes under Title 63, Chapter 25, Idaho Code. (3-20-04)
- 09. Tobacco Product Manufacturer.** Tobacco product manufacturer has the same meaning as that term is defined in Section 39-7802(i), Idaho Code. (3-20-04)
- 009. EFFECTIVE DATE (RULE 9).**
Unless otherwise indicated, the effective date of every rule in this chapter is July 1, 2003. (3-20-04)
- 010. -- 099. (RESERVED)**

Subchapter B -- Quarterly Certifications and Escrow Deposits
(Rules 100 through 199)

- 100. QUARTERLY CERTIFICATIONS AND ESCROW DEPOSITS (RULE 100).**
To promote compliance with Section 39-7803(b), Idaho Code, the Attorney General may require nonparticipating manufacturers quarterly to certify their compliance with the Idaho tobacco master settlement agreement act. The Attorney General may also require nonparticipating manufacturers to make the escrow payments required by Section 39-7803(b), Idaho Code, in quarterly installments during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria: (3-20-04)
- 01. No Previous Escrow Deposit.** Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Idaho; (3-20-04)
- 02. No Escrow Deposit for More Than One Year.** Nonparticipating manufacturers that have not

made any escrow deposits for more than one (1) year; (3-20-04)

03. Untimely or Incomplete Deposits. Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year; (3-20-04)

04. Outstanding Judgments. Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty; (3-20-04)

05. Large Sales Volume. Nonparticipating manufacturers that have more than one million six hundred thousand (1,600,000) of their cigarettes sold during a quarter; and (3-20-04)

06. Other Reasonable Cause. In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a nonparticipating manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarettes sales were made. (3-20-04)

101. DEADLINE FOR QUARTERLY ESCROW DEPOSITS (RULE 101).

Nonparticipating manufacturers who are required to make quarterly escrow deposits must do so no later than thirty (30) days after the end of the quarter in which the sales are made. For example, the deadline for making a quarterly escrow deposit for cigarette sales occurring in February is April 30 of the same year. (3-20-04)

102. DEADLINE FOR SUBMITTING QUARTERLY CERTIFICATION AND NOTIFYING ATTORNEY GENERAL OF QUARTERLY ESCROW DEPOSIT (RULE 102).

Nonparticipating manufacturers who are required to make quarterly escrow deposits, must provide the Attorney General with official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. Nonparticipating manufacturers must also provide their quarterly certifications within the same deadline. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred in February is May 10 of the same year. (3-20-04)

103. QUARTERLY PERIODS DEFINED (RULE 103).

For purposes of this subchapter, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. (3-20-04)

104. UNTIMELY OR INCOMPLETE QUARTERLY CERTIFICATION OR QUARTERLY ESCROW DEPOSIT (RULE 104).

If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the delinquent nonparticipating manufacturer and its brand families may be removed from the directory. (3-20-04)

105. -- 199. (RESERVED)

Subchapter C -- Review of Decisions to Exclude or Remove from the Directory
(Rules 200 through 299)

200. REVIEW OF ATTORNEY GENERAL DECISIONS RELATED TO EXCLUDING OR REMOVING FROM THE DIRECTORY (RULE 200).

A determination of the Attorney General to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Idaho's administrative procedure act, Title 67, Chapter 52, Idaho Code. (3-20-04)

201. -- 299. (RESERVED)

Subchapter D – Directory
(Rules 300 through 399)

300. DIRECTORY (RULE 300).

The Attorney General shall develop, maintain and publish the directory, which shall list all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 39-8403(1), Idaho Code, and all brand families that are listed in such certifications; provided, however, (3-20-04)

01. Missing or Noncompliant Certification. The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with Section 39-8403(1)(b) and (c), Idaho Code, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General. (3-20-04)

02. Inadequate Escrow Deposit and Outstanding Judgments. Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer that: (3-20-04)

a. Any escrow payment required pursuant to Section 39-7803(b), Idaho Code, for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or (3-20-04)

b. Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand family and such manufacturer. (3-20-04)

301. PUBLICATION OF DIRECTORY (RULE 301).

The directory will be developed and published by September 1, 2003. The directory will be available on the Internet at the Attorney General's website. The homepage for the Attorney General's website at <http://www.ag.idaho.gov/index.html>. (3-20-04)

302. DIRECTORY FOR JULY 1, 2003 TO SEPTEMBER 1, 2003 (RULE 302).

For the time period July 1, 2003 to September 1, 2003, the directory shall be deemed to be every participating manufacturer and every nonparticipating manufacturer who has established and properly funded a qualified escrow fund for Idaho. (3-20-04)

01. Participating Manufacturers in Directory. The Attorney General maintains a list, available for inspection, of every participating manufacturer for the time period July 1, 2003 to September 1, 2003. (3-20-04)

02. Nonparticipating Manufacturers in Directory. Attorney General maintains a list, available for inspection, of every nonparticipating manufacturer which, for the time period July 1, 2003 to September 1, 2003, established and properly funded a qualified escrow fund for Idaho. (3-20-04)

303. DIRECTORY UPDATES (RULE 303).

The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter and Section 39-8403, Idaho Code. (3-20-04)

304. DIRECTORY UPDATE NOTICES -- STAMPING AGENTS (RULE 304).

The Attorney General shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General removing the tobacco product manufacturer or its brand family or both from the directory. (3-20-04)

305. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER -- ADDITION (RULE 305).

The first time a tobacco product manufacturer complies with Section 39-8403(1), Idaho Code, the Attorney General shall notify by mail the tobacco product manufacturer of such compliance and that it will be added to the directory. The notice shall also indicate each brand family of the tobacco product manufacturer that the Attorney General has determined will be added to the directory. (3-20-04)

**306. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER --
NONINCLUSION OR REMOVAL (RULE 306).**

The Attorney General shall notify by certified mail to the tobacco product manufacturer's agent for service of process of any decision not to include in or to remove from the directory the tobacco product manufacturer, a brand family of the tobacco product manufacturer, or both. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General taking action as provided in the notice. (3-20-04)

307. BURDEN OF ESTABLISHING ENTITLEMENT TO BE LISTED IN THE DIRECTORY (RULE 307).

The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory. (3-20-04)

308. -- 999. (RESERVED)