

Dear Senators DARRINGTON, Richardson & Burkett, and
Representatives CLARK, L. Smith & Boe:

The Legislative Services Office, Research and Legislation, has received the enclosed rule of the Division of Veterans Services: 21.01.01 Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure .

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-10-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-07-08.

_____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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Judiciary, Rules & Administrative Committee and the House Judiciary, Rules & Administrative Committee

FROM: Brooke Murdoch, Research Analyst

DATE: September 23, 2008

SUBJECT: Division of Veterans Services – IDAPA - 21.01.01 – Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure (Docket No. 21-0101-0801)

The Division of Veterans Services submits notice of proposed rulemaking at IDAPA 21.01.01 – Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veteran Homes and Division of Veterans Services Administrative Procedure. The Division states that the proposed rule is designed to address an increase in complicated appeals and to provide a more efficient appeal process that is aligned with the Administrative Procedure Act. In this regard, the rule allows the Division Administrator to designate a hearing officer other than the Veterans Affairs Commission when the issues are legally complex or the Commission does not have sufficient time. The rule also incorporates language from the Administrative Procedure Act in connection with the issuance and review of written orders. In addition, the rule reflects other revisions. Specifically, the rule augments the provision relating to transfer and discharge to include a transfer or discharge prompted by absence or voluntary action. The rule clarifies that a determination of discharge based on excessive unauthorized absences is discretionary rather than mandatory. Finally, the rule revises notice requirements, primarily in connection with nursing care. The Division states that negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

We note a few minor suggestions. In Subsections 350.01 and 350.02, the word “transferred” should read “transfer” in the present tense. In Subsections 980.03.a. and 980.04.a., we pose the question as to whether the word “transfer” should be included so that the subsections read “Transfer or discharge notices must be sent....” In Subsection 980.05.a., we suggest adding a brief clause alerting the reader of the exception to the thirty day notice period specified in Subsection 980.05.d. For instance, it could read “...date of the action, except under the conditions noted in Subsection 980.05.d.” In Subsection 980.05.c., we suggest changing the latter part of the sentence to include the word “discharge” to read “...Home’s to discharge or

transfer.” We pose the question as to whether the word “transfer” was intentionally excluded from the notice deadlines specified in Subsection 980.05.d. Additionally, we suggest adding the word “general” so that Subsection 980.05.d. reads “Notice of general discharge....” In Section 982.01, the second use of the word “Commission” may want to be replaced with “hearing officer” to read “...contested cases before the hearing officer....” This might better align the language in this Section with revisions made elsewhere in the proposed rule. Section 982.05 should be changed to Section 982.03. In Subsection 982.03.e.i., we pose the question as to whether the word “general” should be included to read “...or a general discharge for unauthorized absences under Paragraph 350.02.k....” Also in Subsection 982.03.e.i., we pose the question as to whether the word “transfer” was intentionally excluded from action to be taken on benefits in relation to Subsection 350.02 and whether the term “discharge” was intentionally excluded from action to be taken on benefits in connection with Subsection 350.03. In Subsection 983.01.g., reference to Subsection 983.08 should be changed to 983.07. In Subsection 983.07, the word “devices” should be changed to “device” in the singular. In Subsection 983.08, the letter “t” in the word “the” in the first sentence should be a lower case. In Subsection 984, the period (.) after the word “hearings” should be deleted. There are two Subsections identified as 984.02.c, one with revisions and one without. In Subsection 984.14.b., the word “field” should be changed to “filed.” In Subsection 984.15, we pose the question as to whether “contested case proceeding” should be changed to “hearing.” Additionally, in Subsections 984.15.f., 984.15.g. and 985.03, it appears the word “Commission” should be replaced with “hearing officer” in order to be consistent with the proposed revisions.

Aside from the minor observations and questions posed, the rule appears to be within the authority of the Division pursuant to Section 65-202, Idaho Code.

cc: David E. Brasuell, Division of Veterans Services
Jim Adams, Administrative Support Manager

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE

DOCKET NO. 21-0101-0801

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 65-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Division has been involved in increasingly complicated appeals. The revisions align the appeals process with the Administrative Procedure Act and provide changes designed to accommodate more complicated appeals. The Division has also noted gaps in its rules concerning notices to applicants and residents. The revisions provide provisions to address these gaps. The revisions establish provisions addressing notices of transfer and notices of discharge for bases not previously addressed. They allow the Administrator to designate a hearing officer other than the Veterans Affairs Commission where the issues are legally complex or where the Commission does not have sufficient time to handle the matter. The proposed rules also revise the procedures relating to appeals to provide a more efficient process that aligns the procedures with the Administrative Procedure Act.

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

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 resulting from this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

David E. Brasuell, Administrator
Division of Veterans Services
320 Collins Road
Boise, ID 83702
Phone: (208) 334-351
Fax: (208) 334-2627

THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0101-0801

202. ACKNOWLEDGMENT OF CONDITIONS LEADING TO DISCHARGE.

Upon admission to a Home, each resident will be advised in writing of the conditions under which immediate discharge will occur, as specified in ~~Subsection 350-07~~ of these rules. Each resident must acknowledge receipt of this information by signature, and that acknowledgment will be a permanent part of each resident's file. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

350. TRANSFER AND DISCHARGE OF RESIDENTS.

A resident can be transferred or discharged, for a period to be determined by the Home Administrator, for the bases set forth in Section 350 of these rules. The Home Administrator will provide notice of transfer or discharge and the opportunity to appeal a transfer or discharge in accordance with Section 9820 of these rules. ~~(4-2-08)~~(____)

01. Emergency Discharge or Transferred. Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged or transferred. ~~(4-2-08)~~(____)

02. General Discharge or Transferred. If the Home Administrator determines that one (1) or more of the following is present or has occurred, the resident may be ~~given notice in accordance with Subsection 982.03 of these rules and~~ discharged or transferred from the Home: ~~(4-2-08)~~(____)

a. Possession of a lethal weapon of any kind by the resident on Division property; possession of wine, beer, or liquor by the resident on Division property; or possession of a controlled substance or medication by the resident, unless prescribed by the resident's physician; (4-2-08)

b. The resident's excessive or habitual intoxication; (4-2-08)

c. Disruption of the peace of the Home by the resident; (4-2-08)

d. The resident strikes or threatens harm to another person; (4-2-08)

e. The resident willfully destroys or wrongfully appropriates state or another person's property; (4-2-08)

f. The resident commits a felony; (4-2-08)

g. The resident uses abusive language or gestures or intentionally commits assault or battery; (4-2-08)

h. The resident fails to comply with the rules of this Chapter or a written directive of the Home Administrator or the Division Administrator; (4-2-08)

i. The financial conditions set forth in Section 950 of these rules are present; (4-2-08)

j. The resident engages in a pattern of behavior that infringes upon the rights of another person; (4-2-08)

k. The resident has unauthorized absences from the Home in excess of those permitted by Section 352 of these rules; (4-2-08)

l. Continued residency at the Home by the resident presents a danger to the resident or other persons; (4-2-08)

m. The resident is required by law to register as a sex offender and the Home has determined that the Home must provide resources in excess of those provided to other residents to ensure the safety of the resident or other persons; (4-2-08)

n. The resident does not meet the requirements and limitations set forth in Section 100 of these rules. (4-2-08)

03. Discharge or Transfer During Absence. A resident who is absent from the Home may be discharged or transferred due to one (1) or more of the following: ()

a. The Home will not have the capability or services to provide an appropriate level of care to the resident upon the resident's return to the Home; ()

b. The resident has not returned to the Home from an absence prior to the expiration of the bed hold period established by a third party payer paying more than half of the resident's maintenance charges; ()

c. The resident ceases to pay the resident's maintenance charges or a bed hold charge applicable to an absence. ()

04. Voluntary Transfer or Discharge. A resident may be transferred or discharged at any time upon voluntary consent of the resident. ()

351. (RESERVED).

352. UNAUTHORIZED ABSENCES -- RESIDENTIAL AND DOMICILIARY CARE.

01. Unauthorized Absences Prohibited. For residential and domiciliary care residents, no more than three (3) unauthorized absences may be accumulated in a thirty (30) day period. If more than three (3) unauthorized absences are accumulated, the resident ~~will~~ may be discharged for a period of thirty (30) days. (~~3-30-01~~)()

02. Yearly Maximum. The maximum number of unauthorized absences allowable in a one (1) year period is twelve (12). Any resident who exceeds twelve (12) unauthorized absences in one (1) year ~~will~~ may be discharged for a period of up to one (1) year. (~~3-30-01~~)()

03. Readmission Requirements. Residents discharged ~~pursuant to this Section~~ for unauthorized absences must reapply for admission and are subject to the same restrictions and conditions as other applicants. (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

98016. MONTHLY CHARGES AND ALLOWANCES.

01. Nursing Care. Pursuant to Section 66-907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of each Home. Charges and allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-30-01)

a. Changes to Charges and Allowances. Members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

b. Notification and Posting. When changes are made to charges or allowances, residents or their families or sponsors will receive written notification and changes will be posted in the business office of each Home a minimum of thirty (30) days prior to the effective date of the change. (3-30-01)

02. Residential and Domiciliary Care. Pursuant to Section 66-907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of the Homes. Allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-20-04)

a. Changes to Charges and Allowances. Pursuant to Paragraphs 915.05.b. and 915.05.c. of these rules, monthly charges for residential and domiciliary care will be adjusted automatically when a change is made to the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12). Relative to monthly allowances, members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

b. Notification and Posting of Changes to Allowances. When changes are made to allowances, residents or their families or sponsors will receive written notification, and changes will be posted in the business office of the Veterans Homes a minimum of thirty (30) days prior to the effective date of the change. (3-20-04)

916L -- 949. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

SECTION 980 HAS BEEN MOVED AND RENUMBERED TO SECTION 916.

980. NOTICE OF ACTION RESIDENT TRANSFER OR DISCHARGE AND NOTICE OF DENIAL OF AN APPLICATION FOR RESIDENCY.

The Home Administrator or his designee must notify the applicant or resident of any action to be taken regarding rejection of an application or transfer or discharge from a Home. ()

01. Form of Notice. The notice of intended action must be in writing. ()

02. Content of Notice. The notice must state the following: ()

a. The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; ()

b. The effective date of the action; ()

c. The applicant's or resident's right to request a hearing according to the provisions in Section 982 of these rules; and ()

d. The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. ()

03. Notification Deadlines for Domiciliary Care. The following notification deadlines are established for Domiciliary Care only: ()

a. Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01 and 350.03 through 350.04 of these rules. ()

b. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. ()

04. Notification Deadlines for Residential Care. The following notification deadlines are established for Residential Care only: ()

a. Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01 and 350.03 through 350.04 of these rules. ()

b. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. ()

05. Notification Deadlines for Nursing Care. The following notification deadlines are established for Nursing Care only: ()

a. Notices of general discharge or transfer pursuant to Subsection 350.02 of these rules must be sent to the resident thirty (30) days prior to the intended effective date of the action. ()

b. Notices of emergency discharge or transfer pursuant to Subsection 350.01 of these rules must be sent to the resident as soon as practical. ()

c. Notices of discharge or transfer during absence pursuant to Subsection 350.03 of these rules must be sent to the resident within three (3) working days of the Home's determination to transfer. ()

d. Notice of discharge for unauthorized absences pursuant to Paragraph 350.02.k. of these rules must be sent to the resident within three (3) days of the last unauthorized absence establishing a basis for discharge. ()

e. The Home is not required to provide notice of voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. ()

f. Notification of the denial of an application for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. ()

06. Notice of Denial of Emergency Relief. The Veterans Services Program Supervisor or his designee must notify the applicant of the denial of his application for emergency relief. ()

a. The notice of denial must be in writing. ()

b. The notice must state the following: ()

i. The reason for denial and a reference to the pertinent rules under which the denial was made; and ()

ii. The applicant's right to request a hearing according to the provisions in these rules; and ()

iii. The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. ()

c. Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. ()

981. APPEAL PROCEDURE.

Upon notification to a resident of transfer or discharge from a Home by the Home Administrator, the resident may request a hearing in accordance with the provisions in Section 982, "Provisions for Contested Cases," of these rules. Any additional violation of Home rules by a resident while on notice ~~for disciplinary action~~ of transfer or discharge will be treated independent of any pending appeal. (3-20-04)()

982. PROVISIONS FOR CONTESTED CASES.

01. Inapplicability of Idaho Rules of Administrative Procedure of the Attorney General. All contested cases shall be governed by the provisions of these rules. The Commission and Division Administrator find that the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable and inappropriate for contested cases before the Commission, because of the specific and unique

requirements of federal and state law regarding notices, hearing processes, procedural requirements, time lines, and other provisions requiring the Division to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgate and adopt alternative procedures and elect not to be governed by any of the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General." (3-30-01)

02. Hearing Rights. ~~Through compliance with these rules, r~~Residents and applicants have the following rights to a hearing: (3-30-01)(____)

a. If a resident of a Home is notified of ~~pending disciplinary action, including transfer or~~ discharge, the resident will be afforded an opportunity for a hearing ~~with the Commission~~. A resident of a Home must attempt to resolve the ~~violations~~ bases stated on the notice of action through verbal discussions with the Home Administrator or his designee prior to submission of a written request for a hearing ~~before the Commission~~. A resident will not be afforded an opportunity for a hearing based upon a voluntary transfer or discharge under Subsection 350.04 of these rules. (3-20-04)(____)

b. If an application for residency in a Home is rejected, the applicant may request a hearing ~~before the Commission~~. (3-30-01)(____)

c. If an application for emergency relief is denied, the applicant may request a hearing ~~before the Commission~~. (3-30-01)(____)

03. Notice of Action. ~~The Home Administrator or his designee must notify the applicant/resident of any action to be taken regarding rejection of an application or discharge from a Home.~~ (3-20-04)

~~**a.** The notice of intended action must be in writing.~~ (3-30-01)

~~**b.** The notice must state the following:~~ (3-30-01)

~~**i.** The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made;~~ (3-30-01)

~~**ii.** The effective date of the action;~~ (3-30-01)

~~**iii.** The applicant's/resident's right to request a hearing according to the provisions in Section 982 of these rules; and~~ (4-2-08)

~~**iv.** The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05 of these rules.~~ (4-2-08)

~~**e.** The following notification deadlines are established for Domiciliary Care only:~~ (3-30-01)

~~**i.** Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules.~~ (4-2-08)

~~**ii.** Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection.~~ (3-30-01)

~~**d.** The following notification deadlines are established for Residential Care only:~~ (3-30-01)

~~**i.** Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules.~~ (4-2-08)

~~**ii.** Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection.~~ (3-30-01)

~~**e.** The following notification deadlines are established for Nursing Care only:~~ (3-30-01)

i. Discharge notices must be sent to the resident thirty (30) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules. (4-2-08)

ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-30-01)

04. ~~Notice of Denial of Emergency Relief.~~ The Veterans Services Program Supervisor or his designee must notify the applicant of the denial of his application for emergency relief. (3-30-01)

~~a. The notice of denial must be in writing. (3-30-01)~~

~~b. The notice must state the following: (3-30-01)~~

i. The reason for denial and a reference to the pertinent rules under which the denial was made; and (3-30-01)

ii. The applicant's right to request a hearing according to the provisions in these rules; and (3-30-01)

iii. The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05 of these rules. (4-2-08)

~~e. Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. (3-30-01)~~

05. Requesting a Hearing. (3-30-01)

a. A request for a hearing from a resident or an applicant for residency in a Home must be submitted through the Home Administrator to the Division Administrator for possible resolution or the scheduling before the Commission of a hearing. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Paragraph 982.02.a. of these rules. ~~Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (4-2-08)(____)~~

b. A request for a hearing from an applicant for emergency relief must be submitted through the Veterans Services Program Supervisor to the Division Administrator for possible resolution or the scheduling before the Commission of a hearing. ~~Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (3-30-01)(____)~~

c. A request for a hearing must be in writing and signed by the applicant/resident. (3-30-01)

d. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (3-30-01)

e. Pending a hearing, benefits will be continued or held in abeyance as follows: (3-30-01)

i. Benefits for domiciliary care, residential care, and nursing care residents will not be continued when the transfer or discharge is an emergency discharge under Subsection 350.01 of these rules or a discharge for unauthorized absences under Paragraph 350.02.k. of these rules. If the hearing request is made before the effective date of action and within three (3) days of receipt of the notice, no action will be taken by the Home Administrator on a general discharge under Subsection 350.02 of these rules, except Paragraph 350.02.k., or a transfer under Subsection 350.03 of these rules pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Paragraph 350.01.a. of these rules final order. (4-2-08)(____)

ii. Benefits for residential care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Paragraph 350.01.a. of these rules. (4-2-08)

~~iii. Benefits for nursing care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Paragraph 350.01.a. of these rules. (4-2-08)~~

~~iv. Benefits for emergency relief applicants will not be granted until the Commission renders a written decision following the hearing issuance of the final order. (3-30-01)()~~

~~f. The Division Administrator will not accept a request for a hearing from a voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. ()~~

983. PREHEARING PROVISIONS.

The following general provisions are applicable to those phases of all ~~contested case proceedings~~ appeals which occur before the hearing is conducted unless precluded by statute or rule. (3-30-01)()

~~01. **Limitation of Time Periods.** In the event there is no other specific provision in these rules or in the Idaho Code, a resident, applicant, or other person aggrieved by any final decision of the agency shall have thirty five (35) days to file an appeal of any adverse order or notice of decision of the Division, Division Administrator, or Home Administrator. (3-30-01)~~

~~021. **Notice of Hearing.** All parties in a contested case proceeding shall be afforded an opportunity Upon the receipt of a timely request for a hearing after reasonable notice, or within such time period as may be mandated by law. The hearing shall be arranged by the Division Administrator and a notice sent to all parties. The notice shall include: (3-30-01)()~~

- ~~a. A statement of the time, place and nature of the hearing; (3-30-01)~~
- ~~b. A statement of the legal authority under which the hearing is to be held; (3-30-01)~~
- ~~c. A reference to the particular sections of any statutes and rules involved; (3-30-01)~~
- ~~d. A statement of the issues involved; (3-30-01)~~
- ~~e. A statement that all documents to be relied upon by the Commission hearing officer to make its order or notice of decision, or otherwise related to the issues involved in the hearing and relied upon by any party, are to be filed with the Division Administrator and that each party must serve its own documents unless otherwise stated by law; (3-30-01)()~~

~~f. A statement that all parties may be represented by counsel; and (3-30-01)~~

~~g. A statement concerning advance requests for hearing transcripts pursuant to Subsection 983.08 of these rules. (3-30-01)~~

~~h. The assignment of a hearing officer for the hearing. The Division Administrator may designate the Commission as a hearing officer. ()~~

~~032. **Prehearing Conference.** The Division Administrator or Commission hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference for the following purposes: (3-30-01)()~~

- ~~a. To formulate or simplify the issues; (3-30-01)~~
- ~~b. To obtain admissions or stipulations of fact and of documents; (3-30-01)~~
- ~~c. To arrange for exchange of proposed exhibits or prepared expert testimony; (3-30-01)~~

- d. To limit the number of witnesses; (3-30-01)
- e. To determine the procedure at the hearing; and (3-30-01)
- f. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (3-30-01)

043. Disposition of Case Without a Hearing. Unless precluded by law, disposition without a hearing may be made of any contested case by stipulation, agreed settlement, consent order, motions to dismiss, summary judgment, or default. (3-30-01)

054. Withdrawal of Appeal. The initiating party at any time may withdraw from any contested case proceeding upon serving written notice of withdrawal to the Division Administrator. (3-30-01)

065. Withdrawal of Attorney or Representative. Any attorney or other person representing a party in a contested case proceeding who wants to withdraw from such proceeding must immediately notify, in writing, the Division Administrator, and all involved parties. (3-30-01)

076. Intervention. Persons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, may intervene if they first secure an order from the Division Administrator granting leave to intervene. (3-30-01)

a. Granting of Leave to Intervene. The granting of leave to intervene or to otherwise appear in any matter or proceeding shall not be construed to be a finding or determination that such party will or may be a party aggrieved by any ruling, order or decision of the agency for purposes of judicial review or appeal. (3-30-01)

b. Form and Content of Petitions. Petitions for leave to intervene must be in writing and must clearly: (3-30-01)

i. Identify the proceeding in which it is sought to intervene, setting forth the name and address of the intervenor; (3-30-01)

ii. Make a clear and concise statement of the direct and substantial interest of the intervenor in such proceeding and the relationship of the intervenor to the other parties; (3-30-01)

iii. State the manner in which such intervenor will be affected by such proceeding, outlining the matters and things relied upon by such intervenor as a basis for his request to intervene in such cause; (3-30-01)

iv. If affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof; and (3-30-01)

v. A statement as to the nature and quantity of evidence the intervenor will present if such petition is granted. (3-30-01)

c. Filing of Petitions. All petitions must be filed with the Division Administrator. Petitions to intervene and proof of service thereof on all other parties of record must be filed within seven (7) days after receiving notice of the proceeding, or if no notice is received, not less than fourteen (14) days prior to the date set for hearing and, if filed thereafter, must state a substantial reason for such delay; otherwise the petition will not be considered. (3-30-01)

087. Hearing Record. The ~~Commission~~ hearing officer or the Division Administrator will arrange for a record to be made of the ~~contested case~~ hearing. The record must be a verbatim record and it will be ~~magnetically~~ recorded by ~~two (2)~~ a recording devices, unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record shall be transcribed at the expense of the party requesting a transcription, and prepayment or guarantee of payment may be required. Once a transcription is requested, any party may obtain a copy at the party's own expense. The recorded proceedings will be provided to the Division Administrator for inclusion into the record. The Division shall maintain an official record of each contested

case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. The record shall include all notices of proceedings, pleadings, motions, briefs, petitions and intermediate rulings, evidence received or considered, any oral or written statements allowed by the ~~Commission hearing officer or the Division Administrator~~, statement of matters officially noticed, offers of proof and objections and rulings thereon, the recording of the proceedings or any transcript of all or part of the proceedings, staff memoranda or data submitted to the ~~Commission hearing officer or the Division Administrator~~ in connection with the proceeding, and any recommended order, preliminary order, final order or order on reconsideration. ~~(3-30-01)(____)~~

098. Subpoenas. Where authorized by law, ~~F~~The ~~Commission hearing officer~~ may compel the attendance of specific persons and the production of specific documents, materials, or objects at any ~~contested case proceeding hearing~~ by subpoena issued by the Division Administrator. (3-30-01)

409. Stipulations. The parties to a contested case proceeding may stipulate as to any fact at issue, either by written stipulation or by oral statement shown upon the record. Any such stipulation shall be binding upon all parties so stipulating and may be considered by the ~~Commission hearing officer and the Division Administrator~~. The ~~Commission hearing officer and the Division Administrator~~ may require proof by evidence of any facts stipulated to, notwithstanding the stipulation of the parties. ~~(3-30-01)(____)~~

140. Rules of Civil Procedure. As contested case proceedings and hearings are informal, the Idaho Rules of Civil Procedure shall not apply. The ~~Commission hearing officer~~ shall provide the procedure at the hearing, as required by the provisions of Section 67-5242(3), Idaho Code. ~~(3-30-01)(____)~~

121. Discovery. Prehearing discovery shall be strictly limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer or present at the hearing. The ~~Commission hearing officer~~ may order disclosure of this information if a party refuses to comply after receiving a written request. ~~(3-30-01)(____)~~

132. Briefing Schedule. The ~~Commission hearing officer~~ may require briefs and written memoranda to be filed by the parties, and may establish a reasonable briefing schedule. ~~(3-30-01)(____)~~

143. Informal Disposition. Unless otherwise prohibited by statute or rule, the ~~Commission hearing officer~~ may decline to initiate a contested case. Informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement or consent order, which informal settlement is encouraged. The parties may stipulate as to the facts, reserving their right to appeal to a court of competent jurisdiction on issues of law. The ~~Commission hearing officer~~ may request such additional information as may be required to decide whether to initiate or to decide a contested case. If the ~~Commission hearing officer~~ declines to initiate or decide a contested case, a brief statement of the reasons for that decision will be furnished to all persons or parties involved. This disposition of a contested case by informal disposition shall be a final agency action pursuant to Section 67-5241, Idaho Code. ~~(3-30-01)(____)~~

984. HEARING PROVISIONS.

The following general provisions are applicable to those phases of all ~~contested case proceedings which occur during the~~ hearings, unless precluded by statute or rule. ~~(3-30-01)(____)~~

01. Classification of Proceedings. ~~Proceedings before the Commission will be classified according to their nature, the relief sought, the need for proof, and the requirements of due process.~~ (3-30-01)

02. Formal Complaints and Petitions. ~~Complaints and petitions must be in writing and shall set forth clearly and concisely the grounds of the complaint and a statement of the facts, actions or things done or omitted. Facts constituting such acts or omissions, together with citations, statutes, or rules involved, should be stated, together with the dates on which the acts or omissions occurred. The initial pleading of each party must provide the name and the address of the complainant or petitioner or representative, together with the name, address and telephone number of his attorney, if any, upon the complaint or petition. Service of documents on the named representative or attorney is valid service upon the party for all purposes.~~ (3-30-01)

031. Computation of Time. In computing any period of time relating to a ~~contested case proceeding hearing~~, the first day of the period is not to be included. The last day of the period is to be included unless it is a

Saturday, Sunday or legal holiday, in which case the period runs until 5 p.m. of the next working day, unless otherwise provided by law. (3-30-01)(____)

042. Service of Documents. Documents concerning ~~contested case proceedings~~ hearings must be served as follows: (3-30-01)(____)

a. All pleadings, briefs and subsequent papers must be served upon every party of record concurrently with the filing with the Division Administrator. (3-30-01)

b. All notices and orders required to be served, other than the initial complaint or petition, must be served in person or by first-class mail. (3-30-01)

c. The initial complaint or petition must be served in person or by certified mail. (3-30-01)

c. The initial ~~complaint or petition~~ hearing request must be served in person or by certified mail. (3-30-01)(____)

d. Service by first-class or certified mail will be deemed complete when the document, properly addressed and stamped, is deposited in the United States mail. The postmark shall be the determinative date for all time lines. (3-30-01)

e. Proof of service must accompany all documents when they are filed with the ~~hearing coordinator~~ Division Administrator. (3-30-01)(____)

053. ~~Commission~~ Hearing Officer Authority. The ~~Commission~~ hearing officer shall, in the context of each proceeding and unless precluded by law, have the discretion, power and authority to: (3-30-01)(____)

a. Determine the order of presentation; (3-30-01)

b. Grant or deny petitions for reconsideration; (3-30-01)

c. Determine the need, if any, for consolidation; (3-30-01)

d. Rule on all evidentiary questions; (3-30-01)

e. Rule on motions and objections and dispose of procedural requests; (3-30-01)

f. Determine the need for prehearing conferences, recesses, adjournments, hearings on motions and postponements; (3-30-01)

g. Administer oaths and affirmations; (3-30-01)

h. Examine witnesses; (3-30-01)

i. Issue subpoenas or request orders in the form of subpoenas as provided by law; (3-30-01)

j. Prescribe general rules of hearing decorum and conduct; (3-30-01)

k. Regulate the course of the proceeding; (3-30-01)

l. Formulate a reasoned statement in support of the decision. Findings of fact should be set forth in statutory language and shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. (3-30-01)

m. Perform any functions including those set forth in Sections 67-5241 through 67-5251, Idaho Code; and (3-30-01)

- n. All other functions specifically authorized by statute or rule. (3-30-01)
- o. The ~~Commission~~ hearing officer shall not have the jurisdiction or authority to invalidate any federal or state statute, rule, or regulation. (~~3-30-01~~)(____)
- 064. Ex Parte Consultations.** Ex parte communications between the ~~Commission~~ hearing officer and any party to a contested case proceeding are precluded pursuant to Section 67-5253, Idaho Code. (~~3-30-01~~)(____)
- 075. Representation by Counsel.** Any party in a contested case proceeding may be represented by counsel, at the party's own expense. (3-30-01)
- 086. Open Hearings.** All ~~contested case~~ hearings ~~must~~ may be open to the public, unless precluded by law. ~~Unless otherwise permitted by~~ When the Commission is acting as a hearing officer, hearings shall be held during regular meetings of the Commission unless otherwise scheduled by the Commission and will be arranged by the Division Administrator. (~~3-30-01~~)(____)
- 097. Testimony Under Oath.** All testimony to be considered, with the exception of matters officially noticed or entered by stipulation, must be given under oath, as administered by the ~~Commission~~ hearing officer or other authority authorized to administer oaths. (~~3-30-01~~)(____)
- 108. Appearance and Representation.** Any party to a proceeding may appear and be heard in person or may authorize an attorney to represent the party at the party's own expense. Unless otherwise ~~expressly allowed~~ prohibited by these rules, law and with the prior approval of the ~~Commission~~ hearing officer, a party may be assisted, but not represented, by a friend or relative. When a party chooses to appear in person and does not speak or understand the English language, an interpreter shall be allowed to interpret under oath. The interpreter shall not be allowed to act as a representative of the party and shall act at the party's own expense. (~~3-30-01~~)(____)
- 109. Default.** If a party fails to appear at a scheduled hearing or at any stage of a contested case without good cause and reasonable notice to the ~~Commission~~ hearing officer and to all other parties, the ~~Commission~~ hearing officer may enter a notice of proposed default order against the nonappearing party. A default order may be altered or set aside upon petition filed within seven (7) days of service of the order showing sufficient good cause stating the grounds relied on, and providing reasonable notice to all parties. (~~3-30-01~~)(____)
- 120. Order of Presentation and Burden of Proof.** At any contested case hearing, the party having the burden of proof (~~usually the petitioner or complainant~~) shall be the first to present testimony unless the ~~Commission~~ hearing officer determines otherwise. Unless otherwise determined, in advance, by the ~~Commission~~ hearing officer, the burden of proof shall be preponderance of the evidence. (~~3-30-01~~)(____)
- 131. Evidence.** Pursuant to Section 67-5251, Idaho Code, the hearing shall be informal and technical rules of evidence shall not apply, except that irrelevant, immaterial, incompetent, duly repetitious evidence, or evidence excludable on constitutional or statutory grounds protected by the rules of privilege recognized by law may be excluded. Hearsay evidence may be received if it is relevant to or corroborates competent evidence, but shall not be the sole basis for any finding of fact. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. (3-30-01)
- 142. Testimony by Telephone or Other Electronic Means.** With the prior approval of the ~~Commission~~ hearing officer, witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all parties. (~~3-30-01~~)(____)
- 153. Official Notice.** (3-30-01)
- a. Discretionary Notice. Notice may be taken of judicially cognizable facts by the ~~Commission~~ hearing officer on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the ~~Commission's~~ hearing officer's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so

noticed. The ~~Commission's~~ hearing officer's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (3-30-01)()

b. Mandatory Notice. For all hearings, the ~~Commission~~ hearing officer must take official notice of the following materials on its own motion or on the motion of any party. Objections going to such notice must become a part of the record. For the purposes of the hearing, it is established as true without proof that the following are admissible, valid and enforceable: (3-30-01)()

- i. Rules of the Division and other state agencies; (3-30-01)
- ii. Federal regulations; (3-30-01)
- iii. The constitution and statutes of the United States and Idaho; (3-30-01)
- iv. Public records; and (3-30-01)
- v. Such other materials that a court of law must judicially notice. (3-30-01)

14. Hearing Officer Decision. The hearing officer will issue a written order as provided in Section 67-5243, Idaho Code. ()

a. Recommended orders will contain a statement of the schedule for review of that order by the Division Administrator. ()

b. Preliminary orders will include notice of the right to seek a review of the order by the Division Administrator and a statement that the order will become final without a request for such review. A request for review shall be field no later than fourteen (14) days following the issuance of the preliminary order, unless a request for reconsideration by the hearing officer is filed prior to the expiration of such fourteen (14) day period. If a petition for reconsideration is made, a request shall be field within fourteen (14) days of the hearing officer's order disposing of the petition or the deemed denial of the petition pursuant to Section 67-5243, Idaho Code. ()

c. A party may file a motion for reconsideration with the hearing officer no later than fourteen (14) days following the issuance of the preliminary order or the recommended order. ()

165. Contents of the Record. Pursuant to Section 67-5249(2), Idaho Code, the record in a contested case proceeding shall be kept by the Division Administrator, on behalf of the ~~Commission~~ hearing officer, and must include the following: (3-30-01)()

- a.** All notices, pleadings, motions and rulings; (3-30-01)
- b.** All evidence received or considered; (3-30-01)
- c.** A statement of all matters officially noticed; (3-30-01)
- d.** A record of testimony and offers of proof, objections and rulings thereon; (3-30-01)
- e.** A record of proposed findings and exceptions; (3-30-01)
- f.** Any decision, opinion, or report by the Commission; (3-30-01)
- g.** All staff memoranda or data submitted to the Commission in connection with consideration of the case; (3-30-01)
- h.** All briefs or memoranda submitted by any party; and (3-30-01)
- i.** Any recommended order, preliminary order, final order, or order on reconsideration. (3-30-01)

16. Review by the Division Administrator and Issuance of the Final Order. Following the issuance of an order by the hearing officer, the Division Administrator will: ()

a. Review recommended orders as provided in Section 67-5244, Idaho Code; ()

b. Review preliminary orders upon the appeal of a party or upon the Division Administrator's own motion as provided in Section 67-5245, Idaho Code; and ()

c. Issue a final order as provided in Section 67-5246, Idaho Code. ()

17. Judicial Review. In accordance with Section 67-5271, Idaho Code, a party which has exhausted all administrative remedies available within the Division may seek judicial review. Proceedings for judicial review shall be instituted in accordance with Sections 67-5270 and 67-5273, Idaho Code. (3-30-01)

985. POST HEARING PROVISIONS.

The following provisions are applicable to those phases of all contested case proceedings which occur after the hearing has been conducted: (3-30-01)

~~**01. Submission of Decision and Order.**~~ ~~The Commission's decision and final order shall be served upon all parties personally or by mail.~~ (3-30-01)

021. Service of Decisions and Orders. Decisions and orders shall be deemed to have been served when copies thereof are mailed to all parties of record or their attorneys by the Division Administrator. (3-30-01)

032. No Motions for Reconsideration. Unless otherwise provided by law or these rules, motions for reconsideration shall not be permitted. (3-30-01)

043. Public Inspection. All final decisions and orders of the Commission must be maintained by the Division Administrator and made available for public inspection after service on the parties. (3-30-01)

054. Effect of Petition for Judicial Review. The filing of a petition for judicial review shall not stay compliance with the decision and order or suspend the effectiveness of the decision and order, unless otherwise ordered or mandated by law. (3-30-01)