



2020

NONAERIAL COMMON FIREWORKS SALES / STORAGE APPLICATION

This information sheet will provide you with information on the steps you need to complete to sell permitted **NONAERIAL COMMON FIREWORKS** in the Middleton Rural Fire District.

1. Contact Middleton Rural Fire District Station #1, located at 302 East Main Street, to obtain the "Application for Fireworks Permit" package. Station #1 may also be reached by phone at (208) 585-6650. *(I.C. 39-2604(2))*
2. A copy of Applicant's insurance coverage shall be filed with Middleton Rural Fire District before permit being issued. *(I.C. 39-2604(3))*
3. A written letter of consent from the owner of the property where Temporary Stand be located shall be on file with Middleton Rural Fire District before permit is issued.
4. Fees must be paid to Middleton Rural Fire District in the form of check or money order in the amount of **\$50.00** payable to: Middleton Rural Fire District. The fee includes permit, initial inspection and one follow-up inspection (if required). Inspection scheduling shall be coordinated through the Deputy Chief at MRFD Station 1. Inspections may be performed Monday through Friday between 8am and 5pm. *The stand shall pass inspection before selling to the public. (I.C. 39-2604(4), I.C. 39-2607(13))*
5. All Firework Stands are subject to the approval of the Deputy Chief and/or Fire Prevention Officers once they are set up. Stands must meet all of the criteria listed on the Inspection Form before a permit will be issued. *(I.C. 39-2607)*
6. Compliance inspections may be performed at random times and without notice. Fire Inspectors may or may not be in uniform and may or may not be utilizing an official vehicle. Stands found to be not in compliance will have their permit revoked on scene by the Inspector. Stands with revoked permits must immediately cease operations and sales. The Fire Chief or his designee may re-issue the permit, at their discretion; after all unsatisfactory items are resolved. *(I.C. 39-2604(6))*
7. A "Fireworks Storage Information Sheet" must be accurately completed and submitted with the application for permit.
8. Permits will be issued by the Fire Chief or designated representative once all requirements are met and inspection is passed.
9. **Nonaerial common fireworks, special fireworks, and fireworks may be sold at retail and used beginning at twelve o'clock (12:00) midnight June 23 an ending at twelve o'clock (12:00) midnight July 5, and beginning at twelve o'clock (12:00) midnight December 26 and ending at twelve o'clock (1200) midnight January 1 each year. The use of fireworks must also comply with the city noise ordinance, section 8-1-5 (Ord. 55,3-18-2015)**
10. There shall be at least one (1) supervisor, at least 21 years of age, on duty at all times when the stand is open for business.
11. No person under eighteen (18) years of age shall be allowed, at any time, inside the screened or otherwise segregated area where fireworks are located.
12. An approved Permit consists of the Inspection Form, completed and signed by the Fire Chief or designee, and must be posted conspicuously inside the stand during all hours of operation. *(I.C. 39-2604(7))*
13. If the stand is operated within the Middleton City limits additional permits are required. You can contact the City of Middleton at (208) 585-3133 to obtain the information. *(Ord. 55, 3-18-2015)*



NONAERIAL COMMON FIREWORKS STORAGE

Instructions: Please supply all information requested. Use back of form if necessary.

Fireworks Stand Information (Please Print)

Location: _____ Owner: _____

Operator's Name: _____ Age: _____

Address: _____

Phone (Day): _____ Phone (Night): _____

Supplier: _____ Phone: _____

Local Rep: _____ Phone: _____

After-hours Storage Location: _____

Number of Stands Serviced from Storage Location: _____

Employees

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

Name: _____ Age: _____ Phone: _____

I certify that the information supplied above is faithful to the best of my knowledge.

Operator Operator Signature Date

Approval of Fire Chief/Marshal of Storage Location Jurisdiction: **Middleton Rural Fire District**

Victor E. Islas/ FCO1629 _____
Fire Official/FCO# Fire Official's Signature Date

Fireworks Permit Fees: \$50.00 Payment Method: Cash Check
Paid in full? Yes No Balance Due: _____ Paid by: _____



INSPECTION FOR THE SALE OF NONAERIAL COMMON AND STORAGE

Requirements shall be met before the stand by open for operation.

Stand Location: _____ Owner: _____ Operator: _____

To be completed by the Inspector:

Initial Inspection Follow-Up Inspection

Requirements for all temporary nonaerial common fireworks sales stands:

- Copy of a bond or valid certificate of public liability and property-casualty insurance providing coverage of up to one million dollars (\$1,000,000) for personal injury and property damage may be required at the time of application for public display.
- The stand must be at least *25 feet* away from any other building or structure.
- The stand must be at least *100 feet* away from any fuel storage/dispensing station.
- Stand's floor area must be less than *750 square feet*.
- Doors must be located at both ends of the structure, *thirty inches (30") wide*, and must open outward. If the rear wall is more than *Twenty-Five feet (25') long*, an addition exit door to the rear is required.
- There must be *two (2)* fire extinguishers (*rated 2A and/or 2A:10BC*) and which bear a service tag dated within the last calendar year. Extinguisher shall be mounted *three to five feet (3' to 5')* above floor level. Extinguishers shall be readily visible and accessible at all times.
- No smoking is permitted in the stand or within *15 feet* of the stand. "NO SMOKING" signs shall be posted inside and outside the stand.
- At least one supervisor *twenty-one (21)* years of age or older must be "on duty" at all times. No person under *Eighteen (18) years* of age work at or about any premises where "non-aerial common fireworks" are sold or offered for sale.
- The stand must be attended at all times.
- There must be a metal trash receptacle with a tight-fitting lid in place.
- Trash and refuse must not be allowed to accumulate.
- There shall be NO open flame within *25 feet* of the stand.
- There must be an approved storage area for under-stock.
- No fireworks shall be discharged in or within *twenty-five feet (25')* of any fireworks stand.
- "Warning Sign" shall be posted inside and outside the stand.

- INSPECTION PASS
- INSPECTION FAILED

Fire Chief/Marshal for: **Middleton Rural Fire District**

Victor E. Islas/ FCO1629
Fire Official/FCO#

Fire Official's Signature

Date

**MIDDLETON RURAL FIRE DISTRICT
CANYON/GEM COUNTIES, STATE OF IDAHO**

RESOLUTION NO. 2018-03
[passed effective June 11, 2018]

**A RESOLUTION OF THE COMMISSIONERS OF MIDDLETON RURAL FIRE
DISTRICT, CANYON/GEM COUNTIES, STATE OF IDAHO.**

**BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MIDDLETON
RURAL FIRE DISTRICT, CANYON/GEM COUNTIES, STATE OF IDAHO, AS
FOLLOWS:**

SECTION 1: Findings: The Board of Commissioners makes the following findings:

- 1.1 The Board of Commissioners has the discretionary powers to manage and conduct the business and affairs of this Fire District; and
- 1.2 The Fire Works Act of 1997 codified at Chapter 26 of Title 39 provides as follows:

39-2602. *DEFINITIONS. As used in this chapter, these terms shall have the following meanings:*

(1) *"Authority having jurisdiction" means a city fire department if the area is within a city, or a fire protection district formed pursuant to provisions of the Idaho Code if the area is within a fire protection district, or the county commission if the area is not within a city or fire protection district....*

(7) *"Permit" means an authorization given by the authority having jurisdiction pursuant to section 39-2604 or 39-2605, Idaho Code.*

...

39-2604. *PERMIT REQUIRED FOR RETAIL SALES. (1) The local authority having jurisdiction may require a permit for the retail sale of nonaerial common fireworks....*

39-2605. *PERMIT REQUIRED FOR PUBLIC DISPLAY OR OTHER EVENT USING FIREWORKS. (1) The authority having jurisdiction may, at its discretion, issue a permit for public display or other events....*

- 1.3 This Fire District is the authority having jurisdiction to require and issue permits for retail sales of non-aerial common fireworks and public display or other events within its boundaries when allowed within a zone as provided by the Canyon County Zoning Ordinance and as provided by the Gem County Zoning Ordinance and as provided by the City of Middleton Zoning Ordinance and in conformity with the provisions of Chapter 26 of Title 39 Idaho Code; and
- 1.4 The Board of Commissioners has exercised its authority to require the permitting for retail sale of non-aerial common fireworks and the permitting of fireworks for public display or other events and to provide a permit criteria, form and process; and
- 1.5 The Fireworks Act of 1997 at Idaho Code Section 39-2604 provides that proceedings for the revocation of permits issued pursuant to this Chapter for violations of the Fireworks Act of 1997 shall comply with the provisions of Chapter 52 of Title 67 Idaho Code [The Idaho Administrative Procedures Act]; and
- 1.6 The Idaho Administrative Procedures Act provides for emergency proceedings in situations which involve immediate danger to the public health, safety, or welfare requiring immediate agency action; and
- 1.7 Violations of the Fireworks Act of 1997, by a permit holder of a nonaerial common fireworks permit issued by this Fire District, are likely to involve situations of immediate danger to the public health, safety, or welfare during the short period under which a permit holder is authorized to sell which will require immediate Fire District action; and
- 1.8 The Deputy Fire Chief/Code Official issues nonaerial common fireworks and is the officer of the Fire District who enforces the Fire District nonaerial common fireworks permitting authority; and
- 1.9 It is the intention of the Board of Commissioners by the adoption of this resolution to provide authority to the Deputy Fire Chief/Fire Code Official to issue emergency orders and complete proceedings to revoke a nonaerial common fireworks permit.

NOW, THEREFORE, based upon the above and foregoing declarations and further based upon the authority of the Board of the Commissioners of Middleton Rural Fire District, Canyon/Gem Counties, state of Idaho, **BE IT RESOLVED AS FOLLOWS:**

SECTION 2: Action

- 2.1 A nonaerial common fireworks retail sales permit issued under this Chapter may be revoked if the permittee violates any provisions of Chapter 26 of Title 39 Idaho Code [Fireworks Act of 1997] in accordance with the following procedure:
 - 2.1.1 In the event a permit holder is in violation of the provisions of Chapter 26 of Title 39 Idaho Code [Fireworks Act of 1997], the Deputy Fire Chief/Fire Code Official

shall determine whether or not the violation creates a situation of an immediate danger to the public health, safety, or welfare requiring immediate Fire District Action and in the situation where such a violation occurs proceed as follows:

2.1.1.1 To issue an order to the permit holder to cease and desist the violation within a reasonable time therein stated [given the situation] and the Order shall state that a failure to timely comply, verified to the Deputy Chief/Code Official, results in the immediate revocation of the permit. This order shall include a brief, reasoned statement which supports the findings and the specific action required as the basis for the order and shall be served upon the permit holder. The Order is effective when issued. The Order shall include a notice of the right of the permit holder to request a contested hearing before the Board of Commissioners.

PASSED BY THE BOARD OF COMMISSIONERS of the Middleton Rural Fire District, Canyon/Gem Counties, state of Idaho, effective this 11TH day of June, 2018.

Absent

Jackie Potter, Commissioner Subdistrict No. 1

Tim O'Meara

Tim O'Meara, Commissioner Subdistrict No. 2

Liz Bolts

Liz Bolts, Chairman/Commissioner Subdistrict No. 3

ATTEST:

Vicki Thurber

Vicki Thurber, Secretary



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

January 26, 2018

Senator Maryanne Jordan
State Capitol
P.O. Box 83720
Boise, ID 83720-1352

Via email: mjordan@senate.idaho.gov

Dear Senator Jordan,

In your letter to our office of January 17, 2018, you posed three questions regarding the Idaho Fireworks Act, Title 39, Chapter 26, Idaho Code. I have taken the liberty of rephrasing those questions slightly in aid of addressing the issues that are of concern. Before proceeding to an analysis of the issues underlying your questions, however, there is one preliminary matter I must address.

Our office has received a number of requests to enforce Idaho fireworks law from constituents who believe those laws, particularly as they related to "special fireworks," are not being enforced in their counties. This has led us to conclude that a number of Idahoans believe that our office has the power to enforce fireworks laws. We do not. By statute, the enforcement of Idaho's penal laws are committed primarily to county sheriffs and county prosecutors. Idaho Code § 31-2227. This office has no supervisory authority over these officials and they are not obligated to follow this office's guidance. Such matters as whether to initiate a criminal investigation or file charges in a given matter are committed to their discretion.

With this in mind, I will proceed to address your questions.

QUESTIONS PRESENTED

- I. What was the legislative intent of Idaho Code § 39-2610(6)?
- II. Does Idaho Code § 39-2610(6) render other requirements of the Idaho Fireworks Act inapplicable where fireworks are sold for export or for purposes of interstate commerce?
- III. May wholesalers sell special fireworks to persons who do not have a permit pursuant to Idaho Code § 39-2605 if the purchaser provides an affidavit stating that he or she will not use those fireworks in Idaho?

BRIEF ANSWERS

- I. Idaho Code § 39-2610(6) intends to except commercial transactions in which fireworks are exported from Idaho for sale in other states or transported from Idaho for other purposes of interstate commerce, from the other requirements of the Idaho Fireworks Act.
- II. Yes. Idaho Code § 39-2610(6) does render the requirements of the Idaho Fireworks Act inapplicable to the commercial activities enumerated in that subsection, which include the importation, storage and sale of fireworks for export from Idaho and for transport from Idaho for purposes of interstate commerce.
- III. No. A sale of special fireworks to a person who merely promises to take them to another state and use them there does not constitute an "export" of fireworks or "interstate commerce" as those terms are used in Idaho Code § 39-2610(6). Sale of special fireworks by a wholesaler, based solely on a purchaser's representation that he or she intends to take them to another state and use them there, is not permitted by § 39-2610(6) and is illegal. In addition, the transportation of special fireworks into another state and use of them there, without the proper permits or licenses from that state, may violate the laws of that state as well as federal law.

ANALYSIS

I. **What was the legislative intent of Idaho Code § 39-2610(6)?**

In interpreting a statute, the Idaho Supreme Court has held that the statute's plain language has preeminent importance:

Our objective when interpreting a statute is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the statute's plain language. This Court considers the statute as a whole, and gives words their plain, usual, and ordinary meanings. When the statute's language is unambiguous, the legislature's clearly expressed intent must be given effect, and we do not need to go beyond the statute's plain language to consider other rules of statutory construction. State v. Taylor, 160 Idaho 381, 385, 373 P.3d 699, 703 (2016) (citing State v. Owens, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015)) (internal citations and quotation marks omitted).

Salinas v. Bridgeview Estates, 162 Idaho 91, 394 P.3d 793, 795 (2017). Thus, if possible, the intent of Idaho Code 39-21610(6) must be determined from that provision's plain language.

Viewed in the context of the entire Act and the other provisions of Idaho Code § 39-2610, subsection (6) of § 39-2610 is not ambiguous. The Act as a whole sets forth a scheme for the importation, sale and use of fireworks in Idaho. Fireworks may only be delivered into Idaho by a person holding a valid wholesaler's or importer's license, and may only be sold, as set forth in Idaho Code § 39-2603(a) and (b), to retailers holding a valid sales tax seller's permit, and persons with a valid permit for use of fireworks in a public display.

Idaho Code § 39-2610 exempts certain persons and activities from the rest of the Act. Subsections (1) - (3) exempt certain uses from the operation of the Act, while subsections (4) - (6) exempt certain commercial activities, so that Chapter 26 does not apply to or prohibit:

- (4) The continued use of existing facilities for long-term storage of fireworks by wholesalers;
- (5) Manufacturing of fireworks in this state; and
- (6) The importation, storage and sale of fireworks for export from this state, or interstate commerce in fireworks.

The terms "export" and "interstate commerce" are not defined in the Act, but neither are ambiguous. "Export" refers to the sending of goods or commodities to another place for sale here.¹

"Interstate commerce" refers to commerce between states.² "Interstate commerce," for purposes of federal law governing fireworks, is defined in the Code of Federal Regulations as:

Commerce between any place in a State and any place outside of that State, or within any possession of the United States, or the District of Columbia, and commerce between places within the same state but through any place outside of that state.

27 C.F.R § 55.11.

The terms "export" and "interstate commerce," by their plain meaning, and in the context of § 39-2610(6), refer to commercial activity involving purchasers or users that are outside of Idaho. This subsection thus creates an exception that allows for the importation, storage and sale of fireworks for the purposes of exporting them out of Idaho or engaging in interstate commerce, that is, commerce between parties in Idaho and parties in other states.

It is important to note, that this does not negate the duty of a wholesaler or importer to obtain a valid license to import fireworks into Idaho for sale here, pursuant to Idaho Code § 39-2603(2). Nor does it negate any other portions of the Act involving the sale

¹ See, Cambridge Dictionary, <https://dictionarycambridge.org/us/dictionary/english/export>, "to send goods to another country for sale or use," "something sold and taken out of a country and into another"; Oxford Dictionary, <https://en.oxforddictionaries.com/definition/export>; "send (goods or services) to another country for sale," "a product or service sold abroad"; Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/export>; "to carry away," "to carry or send (something as a commodity) to some other place (such as another country)"; Dictionary.com, <http://www.dictionary.com/browse/export>, "to ship (commodities) to other countries or places for sale, exchange, etc."

² Black's Law Dictionary defines "interstate commerce as "Traffic, intercourse, commercial trading or the transportation of persons or property between or among the several states of the Union, or from or between points in one state and points in another state; commerce between two states, or between places lying in different states... It comprehends all the component parts of commercial intercourse between different states." Black's Law Dictionary, Sixth Edition, p. 819 (West Publishing Co. 1990).

or use of fireworks in Idaho. Idaho Code § 39-2610(6) applies only to the importation of fireworks into Idaho for purposes of export or interstate commerce.

II. Does Idaho Code § 39-2610(6) render other requirements of the Idaho Fireworks Act inapplicable where fireworks are sold for export or for purposes of interstate commerce?

Idaho Code § 39-2610(6) provides that provisions of Title 39, Chapter 26 “do not apply to and shall not prohibit” the “importation, storage and sale of fireworks for export from this state, or interstate commerce in fireworks.” The meanings of “export” and “interstate commerce” are discussed in the previous section. The “do not apply” language of this subsection would render the other requirements of the Act inapplicable to these specific enumerated activities.

III. May wholesalers sell special fireworks to persons who do not have a permit pursuant to Idaho Code 39-2605 if the purchaser provides an affidavit stating that he or she will not use those fireworks in Idaho?

Idaho Code § 36-2602 contains three definitions relevant this query.

First, Idaho Code § 39-2602(3) defines “Fireworks” as “any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation...” This definition includes “items classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation and designated as UN 0335 1.3G or UN 0336 1.4G.” It excludes “any automotive safety flares, toy guns, toy cannons, caps or other items designed for use with toy guns or toy cannons, party poppers, pop-its or other devices which contain twenty-five hundredths (.25) of a grain or less of explosive substance.”

Second, Idaho Code § 39-2602(6) defines “Nonaerial common fireworks” as

any fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the ground and not to travel outside a fifteen (15) foot diameter circle or emit sparks or other burning material which land outside a twenty (20) foot diameter circle or above a height of twenty (20) feet. Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products.

Third, "Special fireworks" are defined in Idaho Code § 39-2602(8) as "any fireworks designed primarily for display and classified as special fireworks by the United States bureau of explosives or designated as UN 0335 1.3G."

Thus, the definition of "fireworks" in Idaho Code 39-2602(3) encompasses both nonaerial common fireworks, as defined in subsection (6) of that statute, and special fireworks, as defined in subsection (8). Fireworks, in Idaho, are either nonaerial common fireworks or special fireworks.

The sale and use of special fireworks in Idaho, that is, all fireworks that are nonaerial common fireworks, is tightly restricted. Such fireworks may not be sold to the general public by a wholesaler or retailer. They may be sold only by a person holding a wholesaler's or importer's license to a person possessing a permit issued pursuant to Idaho Code § 39-2605(2), unless the sale falls within the exception set forth in § 39-2610(6). Only a person holding a permit issued pursuant to Idaho Code § 39-2605 may use special fireworks in Idaho.

For purposes of brevity, I will not engage in an exhaustive review of the laws of other states, but it can be said that other states have laws requiring a permit for the importation of fireworks into those states, or laws prohibiting or restricting the possession and use of the type of fireworks termed "special fireworks" in Idaho law, or both.³ Someone intending to legally import special fireworks into another state or use them there would have the requisite licenses or permits to do so and would be able to produce them at the time of purchase, and a wholesaler in Idaho should demand that documentation to ensure a sale falls within the exception of Idaho Code 39-2610(6) and that Idaho law is not being violated.

In addition, a federal statute, 18 United States Code § 18-836, provides that it is a crime, punishable by a fine and up to a year in prison, or both, to transport or attempt to transport fireworks into any state in a manner or for use which is prohibited by the laws of that state. "Fireworks" are defined at 27 C.F.R. § 555.11 as

³ See for example, Revised Code of Washington §§ 70.77.255, 70.77.260 (prohibiting importation of fireworks and discharge of display fireworks without license or permit); Oregon Revised Statutes §§ 480.120, 480.130 (prohibiting possession or use of fireworks except as set forth therein, requiring permit for public display of fireworks); Montana Code § 50-37-107 (requiring permit for public display of fireworks); Wyoming Statutes § 35-10-203 (requiring permit for public fireworks displays); Nevada Revised Statutes § 477.033 (requiring license for commercial fireworks displays); Utah Code 1953 §§ 53-7-223, 53-7-224 (requiring license for public display of fireworks; requiring importer license).

Any composition or device designed to produce a visible or audible effect by combustion, deflagration or detonation, and which meets the definition of "consumer fireworks" or "display fireworks" as defined in this section.

This definition is similar to the definition of "fireworks" at Idaho Code § 39-2602(3) and would include "special fireworks" as defined at Idaho Code § 39-2602(8).

The Idaho Legislature surely did not intend Idaho Code § 18-39-2610(b) to act as a means to circumvent the fireworks laws of other states or to violate federal law. A sale of special fireworks in Idaho to a purchaser who submits an affidavit stating an intention to take the fireworks to another state for use there is, without more, not a sale for export from Idaho or for interstate commerce. If the affiant in such a case is without a license or permit from the state to which the fireworks are to be transported,⁴ he or she is not an exporter from Idaho nor an importer into another state nor engaging in interstate commerce. He or she is simply purchasing fireworks in Idaho and promising to use them elsewhere, in possible violation of that other, unspecified, state's law and federal law. A sale of special fireworks to such a purchaser by a wholesaler does not fall within the exception allowed by Idaho Code § 39-2610(b) and it violates Idaho Code § 39-2603(2)(b). It is, therefore, illegal.

CONCLUSION

The sale of special fireworks by a wholesaler for purposes other than for export for Idaho or interstate commerce, as those terms are discussed in this letter, is illegal. As such, a sale to a person who submits only an affidavit stating that he or she intends to take those fireworks out of state to use them there is illegal pursuant to Idaho Code § 39-2603(2)(b). Idaho Code § 39-2610(6) does not create an exception from the Idaho Fireworks act for such an illegal sale.

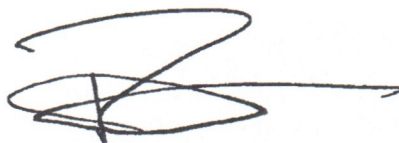
The caution issued at the beginning of this letter bears repeating here. This office is not charged with enforcing Idaho's fireworks law. That responsibility lies with Idaho's county sheriffs and prosecutors, who are vested with the sole discretion to charge and prosecute criminal violations involving fireworks. Under current law, the sole remedy for constituents who believe those laws are not being enforced is the ballot box.

⁴ It is our understanding that the affidavits in question do not require the affiant to specify the state to which the fireworks are supposedly being transported.

January 26, 2018
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I hope you found this analysis helpful. If you have any questions, please feel free to contact this office.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

PRP/fn